

State of U.P. Vs. Presiding Officer, Labour Court and anr.

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Court : Allahabad

Decided On : Jul-29-2002

Reported in : 2002(4)AWC2969; [2002(95)FLR1176]

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 6N

Appeal No. : C.M.W.P. No. 33652 of 1998

Appellant : State of U.P.

Respondent : Presiding Officer, Labour Court and anr.

Advocate for Def. : B.B. Sirohi, Adv.

Advocate for Pet/Ap. : S.C.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. This petition was heard and dismissed by me on 29,7.2002 for the reasons to be recorded later on. Now here are the reasons for dismissing the aforesaid writ petition.

2. This petition under Article 226 of the Constitution of India arises out of the reference made by the State Government under Section 4K of the Industrial Disputes Act, 1947, vide its order dated 4.4.1992 for adjudication which has been registered as Adjudication Case No. 140 of 1992.

3. The workman and the employer both exchanged written statement and evidence before the labour court. The labour court, after considering the material evidence on record, has recorded a finding with regard to the case set up by the workman that he has worked more than 240 days in the previous calendar year and that his services have been terminated after he has worked for about seven years continuously without complying with the provisions of Section 6N of the U. P. Industrial Disputes Act, 1947, as he was never given any notice, nor any retrenchment compensation. The finding of the labour court, though tried to be assailed by the learned counsel for the petitioner, but in vain. The workman concerned has demonstrated before the labour court and it has been accepted by the labour court that in fact the nature of the Job of the workman concerned was permanent and that is why after terminating the services of the workman, one Ramesh has been appointed by the employer after the workman has served continuously for more than seven years.

4. The employer has set up his case that it is admitted that the workman concerned has worked for more than 240 days but since he has absented himself without any notice or information or legal sanctioned leave, it will be presumed that he has abandoned the employment. This is also the admitted case of the employer that no domestic enquiry has been conducted for the alleged illegal absence of the concerned workman and the workman concerned has himself abandoned the employment.

5. It is settled that even in the case of alleged abandonment, it was necessary for the employer to have conducted an enquiry, issued a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave though admittedly have not been done. In this view of the matter, the employer's defence was rightly not accepted by the labour court. Since, it is admitted that the provisions of Section 6N of the U. P. Industrial Disputes Act,

1947, has not been complied with, the labour court has not committed any error of law in holding that the termination of the services of the workman by the employer w.e.f. 4th November, 1989, is neither justified, nor legal. The labour court has further given reasons for allowing the back wages to the concerned workman to the extent of fifty per cent as the employer has not set up that during the period in question the workman was employed elsewhere.

6. In this view of the matter, since the finding of fact has been recorded by the labour court, it cannot be said to be suffering from error of law or perverse. The award of the labour court does not warrant any interference by this Court in exercise of its power under Article 226 of the Constitution of India.

7. In view of what has been stated above, the writ petition deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. There is no order as to costs.

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