

Bata Sheo Store and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-14-2003

Reported in : (2003)3UPLBEC2266

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 2T, 4K and 6B(4)

Appeal No. : Civil Misc. Writ Petition No. 51325 of 1999

Appellant : Bata Sheo Store and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : M.C. Tiwari and ;M.K. Pandey, Advs. and ;S.C.

Advocate for Pet/Ap. : S. Chatterjee and ;J.N. Tewari, Advs.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. The petitioner-employer, by means of this writ petition under Article 226 of the Constitution of India, has challenged the award dated 6th May, 1999, published on the Notice Board on 25th October, 1999 (Annexure '19' to the writ petition), passed by the Industrial Tribunal-1, Allahabad in Adjudication Case No. 36 of 1998

2. Following dispute was referred for adjudication to the Industrial Tribunal:

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3. After the notices were issued by the Tribunal, the parties have exchanged their pleadings and adduced the evidence. It is admitted case of the parties that during the pendency of the disciplinary proceedings against the workman, a compromise has been entered into between the workman and the employer-petitioner wherein according to the employer, it was agreed that the employer will take lenient view and reinstate the employees, who were involved in illegal strike. Thus, the workman was also reinstated by the employer and posted at shop at Kasganj in Uttar Pradesh subject to his complying with the required terms and conditions of the settlement arrived at between the employer and the employee. The Industrial Tribunal has framed issues, which arose according to the Industrial Tribunal for consideration on 3rd December, 1998. One of the issue framed by the Industrial Tribunal was whether the domestic enquiry conducted by the employer is fair and proper and whether the finding of the Enquiry Officer is perverse. Further, whether the punishment of the dismissal awarded to the workman is in accordance with Clauses 21-B and 22 of the Certified Standing Order. It has been submitted before the Industrial Tribunal on behalf of the workman that the employer have failed to prove charges levelled against the workman and have further failed to prove that any valid domestic enquiry was conducted against the workman. It has also been submitted on behalf of the workman concerned that the Industrial Tribunal cannot travel beyond the reference and a perusal of the reference made to the Industrial Tribunal clearly demonstrates that the reference that was made to the Industrial Tribunal was with regard to the termination of the services of the workman on the basis of the domestic enquiry dated 3rd February, 1997.

4. The employer have set up their case in the written statement that in view of the settlement arrived at between the employer and employees, the reference need not be answered and since the workman has not prepared to join at Kasganj as

agreed upon in the settlement. The workman is not entitled to be heard nor is entitled for any relief and the reference has to be answered in favour of the employer and against the workman. The workman has submitted that the alleged Bipartite settlement between the employees and the Bata Employee is wholly misconceived and is not binding on the workman concerned.

5. Learned Counsel for the workman relied upon the provisions of Section 2 (T) of the U.P. Industrial Disputes Act which reads as under;

'Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceeding where such an agreement has been signed by the parties thereto in such a manner as may be prescribed and a copy thereof has been sent to the State Government and the conciliation officer.'

6. It is submitted on behalf of the workman that in view of the aforesaid definition of the 'Settlement', the employer have miserably failed to demonstrate that there was any settlement which was communicated to the workman. For this purpose provisions of Section 6-B (4) of the U.P. Industrial Disputes Act, 1947 has also been relied upon which provides as under:

'6-B. (4) Where a settlement under Sub-section (1) has been refused registration, it shall not be binding under this Act.'

7. The Industrial Tribunal, thus, recorded a finding that the alleged settlement has no local sanctity. The learned representative submitted that the employer have miserably failed that any valid/legal domestic enquiry was held against the workman. The reference in view of the evidence on record deserves to be decided in favour of the workman. The employer have not been able to show or prove that the workman was ever reinstated pursuant to the so-called bipartite agreement and he was transferred after reinstatement and thereafter in failure of joining at Kasganj, even if it is assume do not oust the jurisdiction of the Tribunal. The Tribunal has, therefore, not committed any illegality in answering the reference.

8. I have gone through the so-called bipartite settlement and, in my opinion, the findings recorded by the Industrial Tribunal do not suffer from any infirmity much less illegal infirmity which may warrant interference by this Court in exercise of powers under Article 226 of the Constitution of India.

9. This writ petition is devoid of merits and it is accordingly dismissed. The interim order, if any, stands vacated. There will be no order as to costs.

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