

Srinath Mishra Vs. Mukhya Nagar Adhikari, Nagar Nigam and anr.

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Court : Allahabad

Decided On : Sep-13-2006

Reported in : 2007(2)AWC1398; [2006(111)FLR1066]

Judge : Vineet Saran, J.

Appellant : Srinath Mishra

Respondent : Mukhya Nagar Adhikari, Nagar Nigam and anr.

Advocate for Pet/Ap. : Sri. B.D. Shukla

Disposition : Petition dismissed

Judgement :

Vineet Saran, J.

1. By means of this writ petition the petitioner has challenged the orders dated 23.7.2003 and 20.4.2004 passed by labour court, Allahabad whereby his application under Section 6H(2) of the U.P. Industrial Disputes Act read with Section 33C(2) of Industrial Disputes Act, 1947 has been rejected.

2. The brief facts of this case are that on 25.5.1985 the petitioner was engaged on daily wage basis in the electricity department of the Nagar Nigam, Allahabad. However, after 10.12.1986 the Nagar Nigam stopped taking work from the petitioner. The petitioner thereafter raised an industrial dispute which was referred

to the labour court, Allahabad and registered as Adjudication Case No. 113 of 1987. By an award dated 21.11.1988, the termination of the services of the petitioner was set aside and the Nagar Nigam was directed to reinstate the petitioner with full back wages. In the year 1994 the petitioner filed an application under Section 33C(2)/6H(2) before the labour court for payment of his wages for the period 11.12.1986 to 15.2.1994. The said application was allowed by the labour court vide order dated 27.8.2000 and consequently the petitioner was paid his wages for the aforesaid period. Then again in the year 2002, the petitioner filed another application under Section 33C(2)/6H (2) for computation and payment of his salary for the period 15.2.1994 to 20.11.2002, which was registered as Misc. Case No. 133 of 2002. The labour court, vide its order dated 23.7.2003, has rejected the said application and held that the petitioner was not entitled to any payment of salary. The petitioner thereafter filed a review application which has also been rejected by the labour court vide its order dated 20.4.2004. Aggrieved by the aforesaid orders dated 23.7.2003 and 20.4.2004, the petitioner has filed this writ petition.

3. I have heard Sri B.D. Shukla, learned Counsel for the petitioner as well as Sri R.K. Misra, learned Counsel for the contesting respondent No. 1 and have perused the record. Pleadings have been exchanged and with the consent of the learned Counsel for the parties this writ petition is being disposed of at this stage.

4. The submission of the learned Counsel for the petitioner is that the petitioner had been repeatedly making requests for being taken back in service but the respondent Nagar Nigam did not permit him to join and as such, he would be entitled to payment of salary. It has further been urged that while deciding the claim of the petitioner for payment of wages/salary for the period 11.12.1986 to 15.2.1994 since a categorical finding of fact had been recorded by the labour court vide order dated 23.7.2000 to the effect that the petitioner was not permitted to join the service, the said finding would be binding on the labour court for the claim made by the petitioner for the subsequent period from 15.2.1994 to 20.11.2002 also.

5. The labour court has given a categorical finding that no documentary or oral evidence whatsoever was adduced by the petitioner in support of his claim for payment of salary for the aforesaid period under Section 6H(2) of the U.P. Industrial Disputes Act. After holding that it was for the petitioner to prove his case that he was wrongly not permitted to work and that the petitioner had failed to do so as no evidence was adduced by the petitioner in support thereof, the claim of the petitioner was rejected. In my view the categorical findings are based on the facts of the case which require no interference by this Court in this writ Jurisdiction.

6. Section 6H(2) of the U.P. Industrial Disputes Act, which would be applicable to the present case, provides that 'where any workman is entitled to receive from the employer any benefit which is capable of being computed in term of money', the same, after being determined by the labour court, may be recovered from the employer. In the present case, the petitioner is claiming wages. 'Wages' has been defined in Section 2(y) of the Act to mean all remuneration capable of being expressed in terms of money, which would, if the terms of employment were fulfilled, be payable to a workman in respect of his employment. The term of employment would include that the workman should make himself available for such employment. In the present case, the specific finding of the labour court is that the petitioner did not adduce any evidence in support of his case to show that he was available for joining in terms of his employment. The labour court has rightly observed that along with the petitioner, 8 other persons were also given the same benefit of reinstatement who were placed in similar circumstances as that of the petitioner. After passing of the award, the other 8 persons have been reinstated by the respondent Nagar Nigam, as they voluntarily made themselves available for joining. No mala fide has been alleged by the petitioner for not being permitted to join service after the passing of the award. Further, in the absence of the petitioner adducing any evidence to show that he approached the respondent Nagar Nigam to permit him to Join in terms of the award, he has rightly been denied the benefit of Section 6H(2) of the Act. Even otherwise, the petitioner has claimed wages for more than eight years. It is not understood as to why he waited for so many years and then filed the application claiming wages for all these years, without even adducing any evidence that he had ever presented himself for joining

back duties. The finding recorded by the labour court in its earlier order dated 27.8.2000 would not be binding on the labour court for the purposes of determining fresh issue of payment of wages for subsequent years. Each case has to be decided on the pleadings and the evidence adduced before the Court. Since I have already held that in the present case, no evidence was adduced by the petitioner before the labour court in support of his case, the order of the labour court cannot be faulted. As such, no interference is called for in this writ petition.

7. This writ petition is, accordingly, dismissed. No order as to cost.

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