

Neutral Citation No. - 2023:AHC:223891

RESERVED

Court No. - 5

Case :- WRIT - C No. - 24057 of 2022

Petitioner :- Sunil Kumar

Respondent :- Presiding Officer, Labour Court And 3 Others

Counsel for Petitioner :- Jata Shankar Pandey

Counsel for Respondent :- C.S.C.,Baleshwar Chaturvedi

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Jata Shankar Pandey, learned counsel for the petitioner and Shri Mata Prasad, holding brief of Shri Baleshwar Chaturvedi, learned counsel for respondent nos. 2 to 4.
2. The instant writ petition has been filed challenging the impugned award dated 16.11.2021 (published on 28.03.2022) passed by the respondent no. 2 in Adjudication Case No. 01 of 2019; by which negative award has been passed against the petitioner.
3. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Lineman in the year 2001 and was working regularly on the said post in Shikohabad Division, Firozabad. The name of the petitioner was also shown in the muster roll and identity card was also issued by the respondent no. 2. He further submits that the petitioner was also shown in the log-sheet of every month, which was verified by the respondent no. 2, but the services of the petitioner was terminated without following due process of law. Thereafter, a reference was made under section 4K of the U.P. Industrial Disputes Act, 1947. He further submits that in spite of the several dates having been fixed in the matter, the respondent nos. 2 to 4 did not file their written statement, while the petitioner file written statement on 25.02.2020. The respondent categorically stated that they do not propose to file any reply and evidence, which fact has been

mentioned in the order dated 06.07.2021, and therefore, the court below closed the opportunity to file written statement to the respondent nos. 2 to 4. He further submits that thereafter, on 20.09.2021, the respondents filed some papers, being paper no. 12/B(1) and the court below against the facts and circumstances of the case as well as Rule 12 of the U.P. Industrial Disputes Rules, 1957 passed the negative award against the petitioner vide impugned award dated 16.11.2021. He further submits that no opportunity was given to the petitioner to rebut the said papers and in an illegal and arbitrary manner, held the petitioner to be outsourced employee and therefore, not entitled for any relief.

4. Learned counsel for the petitioner further submits that the petitioner filed various documents along with affidavit, but the respondent nos. 2 to 4 chose not to file any written statement or evidence denying the facts mentioned in the claim and after the evidence was closed, they filed paper no. 12/B(1) stating therein that the petitioner was an outsourced employee and therefore, not entitled for any relief. Learned counsel for the petitioner further submits that neither any agreement between the outsourcing agency was mentioned or brought on record, nor any date of agreement was mentioned, nor any detail was given and in spite of that, by the impugned award, the petitioner's claim has been rejected treating the petitioner as an employee from outsourcing agency. He further submits that once the respondent nos. 2 to 4 chose not to file any rebuttal or cross-examine the petitioner, the court below was not justified in accepting the additional evidence after closing of the same as paper no. 12-B(1). He further submits that the evidence, which has been filed, was not proved to be correct as required under section 61 of the Evidence Act. He further submits that once the assertion has been made in the form of affidavit, which is unrebutted, the tribunal was duty-bound to accept the same as correct. In the case in hand, once the respondent nos. 2 to 4 chose not to file any rebuttal, no adverse

view should have been taken. He further submits that the word “shall” has been used in Rule 12 of the U.P. Industrial Disputes Rules, 1957. In support of his contentions, he has placed reliance upon the judgements of the Apex Court in ***Lohia Properties (P) Ltd. Vs. Atmaram Kumar*** [1993 (0) SCC 668] and ***Secretary, Haryana State Electricity Board Vs. Suresh*** [1999 (3) SCC 601] as well as judgement of this Court in ***State of U.P. Vs. Presiding Officer, Industrial Tribunal IV*** [2003 (1) AWC 265]. He prays for allowing the writ petition.

5. Per contra, learned counsel for the respondents supports the impugned order and submits that the petitioner was never their employee. He further submits that paper no. 12/B(1) was filed on 20.09.2021, where the time was granted to the petitioner to file rebuttal, but instead of filing rebuttal on 21.09.2021, the order was passed specifically recording a finding of fact that the petitioner did not want to file any objection and therefore, the matter was proceeded. He further submits that the petitioner chose not to file any rebuttal to the said paper and therefore, he cannot take a plea that no opportunity was given to him at this stage. He further submits that mere filing of an application and affidavit, the petitioner will not be entitled for any relief in absence of any material or document in support thereof to justify his claim. He further submits that the stand of the respondents is very clear that neither the petitioner was their employee, nor he was engaged or appointment letter was issued to him. He further submits that the petitioner even did not make any request for summoning the records of the respondents. In support of his submissions, he has placed reliance on the judgement of the Apex Court in ***Rajasthan State Ganganagar S. Mills Limited Vs. State of Rajasthan*** [2005 AIR (SC) 4065] and the judgement of this Court in ***Satish Mohan Vs. State*** [1986 AIR (All) 126] and prays for dismissal of the writ petition.

6. After hearing learned counsel for the parties, the Court has perused the records.
7. The respondents have denied the petitioner to be their employee, but the employee of contractor. On perusal of record shows that neither any agreement, nor any material was brought on record to show as to when the contract was entered between the respondents and the contractor for engaging employee from outsource. Further, the respondents chose not to file any rebuttal to the claim made by the petitioner and the same was closed by order dated 06.07.2021. While accepting the paper no. 12/B(1), the Tribunal ought to have passed an order for accepting the application after giving due opportunity to the petitioner, but the order sheet reveals that paper no. 12/B(1) was filed on 20.09.2021. The matter was listed on the very next date, i.e., 21.09.2021, and paper no. 12/B(1) was accepted without recording any reason; that too, without recalling the order dated 06.07.2021.
8. In view of the aforesaid facts & circumstances of the case, the impugned award cannot be sustained in the eyes of law. The impugned award dated 16.11.2021 (published on 28.03.2022) passed by the respondent no. 2 in Adjudication Case No. 01 of 2019 is hereby quashed.
9. The writ petition succeeds and is allowed.
10. The matter is remanded back to the respondent no. 2 for passing a fresh order in accordance with law without being influenced by any of the observations made herein-above.

Order Date :-28/11/2023

Amit Mishra