

Court No. - 5

Case :- WRIT - C No. - 75746 of 2010

Petitioner :- The Superintending Engineer U.P. Jal Nigam And Another

Respondent :- Ashwani Kumar Singh And Another

Counsel for Petitioner :- Amit Dube,Vimlesh K.Rai

Counsel for Respondent :- C.S.C.,K.C.Vishwakarma

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Vimlesh Kumar Rai, learned counsel for the petitioners.
2. By means of this writ petition, the petitioners have assailed the award dated 7.1.2010 as well as amended award dated 14.10.2010 passed by the Labour Court, Varanasi/respondent No.2.
3. Brief facts of the case are that the respondent no.1 raised an industrial dispute before the Conciliation Officer, Labour Court, which was failed and ultimately, matter was referred to the State Government under Section 4-K of the Industrial Dispute Act (hereinafter referred to as 'the Act') and thereafter, the State Government referred the matter to the Labour Court for adjudication. Thereafter, the respondent no.1 has filed a belated application/written statement before the respondent no.2 stating therein that he worked continuously as 'Mechanic' in the department from 1.8.1985 to 6.5.1986 as daily-wager on muster roll, wherein his services were illegally terminated on 7.5.1986 without paying any retrenchment compensation. Further, the petitioners filed their objection on 18.1.2008 specifically stating therein that there is no industrial dispute, which can be arisen between the petitioners and the respondent no.1 at a belated stage; after a lapse of 22 years. Not being satisfied from the same, the impugned award dated 7.1.2010 was passed and thereafter, the same was amended

vide order dated 14.10.2010, which was never approved by the State Government. Hence the present petition.

4. Learned counsel for the petitioners has submitted that it is an admitted case of the respondent no.1 that he was a daily-wager and worked from 1.8.1985 to 6.5.1986. He has further submitted that in para 12 of the impugned order dated 7.1.2010, it has clearly been mentioned that he did not work for 240 days continuously in a year and therefore, he is not entitled for any relief. He further submitted that without considering the material on record, the respondent no.2 passed the impugned award.

5. In support of his claim, learned counsel for the petitioners has relied upon the judgement of this Court passed in the case of **Wahid Khan Vs. Presiding Officer Labour Court, Mirzapur and Others, (Writ-C No.18312 of 2010)**, decided on 2.4.2015. He prays for allowing the writ petition.

6. Nobody appeared on behalf of the respondent no.1.

7. The Court has perused the records.

8. Admittedly, it is an admitted fact that the respondent no.1 was not a regular employee from the beginning and worked as daily-wager from 1.8.1985 to 6.5.1986. Further, from calculation of working days of respondent no.1 mentioned in para 12 of the impugned award, it does not complete 240 days in a year, but while passing the impugned award, vital fact has been ignored by the Labour Court. Records further reveals that no cogent material was brought on record on behalf of the respondent no.1 which show for raising the dispute at the belated stage; after a lapse of 22 years. Record further reveals that by order dated 14.10.2010, the award dated 7.1.2010 amended, which was not approved by the State Government and neither any material has been brought on record.

9. This Court in the case of Wahid Khan (supra) in para 27 has held as under:-

“27. The long line of decisions Hon'ble Supreme Court

noted above, makes it clear that principle of grant of relief of reinstatement with full back wages, when the termination is found to be illegal cannot be applied mechanically in all cases. Where services of a regular/permanent workman are terminated illegally and / or malafidely and / or by way of victimization and unfair labour practice etc. then reinstatement may be justified. But in the case of a daily wage worker where the termination is found illegal because of procedural defect, namely, in violation of the provisions of Section 6-N of the U.P.Act, then in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. However, a workman falling under the circumstances as mentioned in para 25 of the judgment in the case of BSNL (supra) may be reinstated.”

10. This Court in the case of M/s Laxmi Palace (Palace) Vs. Presiding Officer, Labour Court, Varanasi, 2005 (105) FLR 325 has held in para 10 as under:-

“The requirement of law envisaged for quasi judicial authority such as tribunal is that the approach should be one simulating the judicial standard and it must receive and place on record all the necessary, relevant, cogent and acceptable material facts germane and relevant to the facts in issue and inference to form conclusion has to be drawn in conformity with the judicial norms. In substance, the approach of the Labour Court should be judicious. It transpires from a perusal of the award that the Labour Court has not discussed the materials on record nor it tried to discuss the question for inference how the termination order was illegal on the basis of materials on record. The least that was expected of labour court was to discuss the claims of the workman simulating the judicial standard in case it was constrained to proceed exparte in the facts and circumstances of the case i.e. to have analytically examined the merit of the claims and recorded his satisfaction with reference to the provisions of the [Industrial Disputes Act](#). It is well enunciated by catena of decisions that the decision on merit must have its genesis on material facts on record and the authority is not permitted to traverse beyond the facts on record to draw inference and make out a case of subjective satisfaction for his conclusions. What operated in the mind of the authority remained entombed and there is no discussion to articulate the view that the workman was illegally fired away and was entitled to reinstatement. It is therefore explicit from the award that the award was rendered without application of mind and it cannot be given the complexion of an award on merit. The award being bereft of any discussion on merit even of claims of the workman thus, non-application of mind is conspicuously discernible in the order.”

11. In view of the facts as stated above and in the light of the judgment of Wahid Khan (supra), impugned award dated 7.1.2010 as well as amended award dated 14.10.2010 is quashed. The writ petition is **Allowed** accordingly.

Order Date :-12.10.2023

Pravesh Mishra/-