

Court No. - 17

Case :- WRIT - C No. - 1000494 of 2010

Petitioner :- Allied Paints And Resins Industries Govt.
Industrial Lko

Respondent :- Presideing Officer Industrial Tribunal -Ii
Lko.And Ors.

Counsel for Petitioner :- K K Tripathi,Kirti Kar Tripathi

Counsel for Respondent :- C.S.C.,Chandra Prakash
Misra,D.K.Singh Chauhan

Hon'ble Alok Mathur,J.

1. Heard Sri Kirti Kar Tripathi, learned counsel for petitioner as well as learned Standing Counsel for respondent Nos. 1 & 3 and Sri D.K. Singh, learned counsel for respondent No. 2.

2. By means of present writ petition the petitioner has challenged the order dated 31.10.2007 passed by Industrial Tribunal/Labour court, Lucknow thereby allowing the claim preferred by the respondent No. 2-workman. He has also challenged the order dated 5.10.2009 whereby the application for recall of the ex-parte award has been rejected.

3. It has been submitted by learned counsel for petitioner that respondent No. 2 was appointed in the petitioner's organization as a helper on 01.05.1998 on permanent basis and continuously worked with the petitioner till 09.01.2006 when he was orally asked not to come for duty consequently his services was terminated by oral order of termination. The workman has stated that he was receiving Rs. 2658/- per month at the time when his services were dispensed with. It was further stated by the workman that he had continuously work for 240 days in every year during his services with the petitioner and in the aforesaid facts, it was stated that his termination was in violation of Section 6(N) of U.P. Industrial Disputes Act and prayed that he may be reinstated in services with all consequential benefits.

4. The Industrial Tribunal/Labour Court registered the claim of the petitioner being Case No. 409/2006 and proceeded to consider the reference whereby Tribunal was asked to adjudicate with regard to termination of the services of the workman on 09.01.2006 and also to consider as to what relief he was entitled to. The Tribunal had sent notices to the petitioner. Despite service of the notice, no appearance was made on behalf of the petitioner and consequently the Tribunal proceeded ex-parte to consider the claim of the workman.

5. The workman on his behalf filed an affidavit in support of his claim and also made an oral statement. In his affidavit as well as statement while supporting his claim he stated that he had worked continuously from 01.05.1998 to 08.01.2006 i.e. he has worked for more than 240 days in a calendar year preceding his termination. It was further stated that on 09.01.2006 his services were orally terminated in illegal and arbitrary manner without giving any notice and consequently he submitted that orally termination of his services was illegal and arbitrary and violative of provisions of Section 6(N) of Industrial Disputes Act, 1947.

6. The Tribunal considering the aforesaid facts and also that there was sufficient provisions contained in Rule 12(9) of the U.P. Industrial Disputes Rules, 1957, in case the employer does not put in appearance and the claim of the workman is not opposed, the learned Tribunal can proceed to consider the claim of the workman treating his contention to be correct and pass an award accordingly.

7. It is in the aforesaid facts and circumstances, that the Labour Court was of the considered view that provisions of Section 6(N) of the Act of 1947 are fully satisfied. The workman has completed 240 days in a calendar year and his services were orally terminated and consequently allowed his claim and ordered for reinstatement of the services of the workman with back wages of 50% from the date of his termination to the date of his reinstatement.

8. Learned counsel for petitioner has submitted that subsequently when they came to know about the order passed by the Labour Court, they moved an application of recall for setting aside the ex-parte award.

9. The Tribunal considered their application and also went through the record. From the record, it was found that notices were issued to the petitioner i.e. M/s Allied Paints And Resins Industries, Lucknow and the said notice was received by one Jagmohan Chawla on their behalf. It concluded that it is in the aforesaid circumstances that notices were adequately served and the notice which was sent through Messenger by the Tribunal were received by the petitioner and non-appearance was deliberate and consequently proceeded to reject the application for recall. It was also brought on record that the person who received the notice i.e. Jagmohan Chawla was the father of the Manager/partner of the said firm and this fact was not denied by the petitioner and consequently the Tribunal also rejected the application for recall on the ground of limitation. The Tribunal noticed the fact that the ex-parte award was

passed on 31.10.2007 and was published in the official gazette on 11.01.2008 while the petitioner had moved an application for setting aside the ex-parte award on 22.02.2008. They did not accept the contention of the petitioner that they had received a copy on 22.01.2008 and an application was made on 22.02.2008.

10. They relied upon the ruling of this court in the case of State of U.P. Vs. Presiding Officer, 2005 (105) FLR 391, that the application for recalling of ex-parte award was moved after expiry of three month from the date of enforcement of the award while under the provisions of Industrial Disputes Act, an award becomes enforceable on expiry of 30 days from the date of its publication and in the present case, the award was published on 11.01.2008 and become enforceable on 11.02.2008.

11. Learned counsel for workman on the other hand has supported the award and opposed the writ petition. It has been submitted that services of the workman were terminated contrary to the provisions of Section 6(N) of Industrial Disputes Act. It was stated that the workman had demonstrated that there was clear violation of Section 6(N) of the Act of 1947 inasmuch as he had worked more than 240 days in a calendar year preceding the date of his termination and his services were terminated by an oral order without there being any notice and the Tribunal has accepted the contention of the respondent-workman. In support of his contention, he has filed an affidavit to examine himself as a witness.

12. After considering the case of the claimant, the Tribunal has duly considered the facts arising therein and was of the view that termination of the workman was in violation of Section 6(N) of the Act of 1947 and consequently has quashed the termination and granted the relief of reinstatement alongwith consequential benefit of 50% of the back wages.

13. Learned counsel for petitioner while assailing the said award has submitted that the Tribunal has misdirected itself in allowing the award in favour of the workman. It was submitted that they had not applied their mind to the facts of the present case and in support of their submissions, he has cited the judgment passed in the case of **Devyani Beverages Ltd. Vs. Labour Court-II, Deputy Labour 2006 (108) F.L.R. 426.**

14. To canvas his submissions, the presiding officer has to record its finding on the issues arising between the parties and in case findings are not recorded then the order passed by the Tribunal would be non-est. He has further submitted that the

said position has been reiterated by this Court in the case of **Dewan Rubber Industries Ltd. Vs. Labour Court & Others (Writ C No. 73463 of 2011)**.

15. It has been submitted that allegation against the workman was that he was caught by the watchman of the factory stealing the paint boxes manufactured by the petitioner and a F.I.R. was also lodged against him and in the said circumstances, the Tribunal should not have been reinstated him in service.

16. Learned counsel for respondent on the other hand has denied the contention of para No. 22 of the writ petition and the allegation levelled by the petitioner. It has further been stated that no domestic inquiry has been conducted by the petitioner and merely by oral order his services has been dispensed with. He has further submitted that no F.I.R. was never lodged against the petitioner and only non-cognizable report was registered in the police station and no further proceedings were undertaken nor was the petitioner prosecuted in the said matter.

17. I have heard learned counsel for the parties and perused the record.

18. The workman had approached the Labour Court/Industrial Tribunal alleging that his services have been terminated in violation of provisions of Section 6(N) of the U.P. Act of 1947. He had submitted that he had worked continuously with the petitioner from 01.05.1998 till the date of his termination and accordingly he had worked for 240 days in a calendar year and further his services were terminated without following any procedure. Neither any notice was given nor any salary in lieu of notice and accordingly on this count also his termination is illegal and arbitrary.

19. The Tribunal also considered the fact that despite notice the petitioner had not put in appearance and consequently as per provisions of Rule 12(9) of U.P. Industrial Rules, 1957, the version of the workman was liable to be accepted. After considering the aforesaid facts, the Tribunal has applied its mind and came to the conclusion that termination was illegal and arbitrary and that the workman is entitled to reinstate in service along with 50% of the backwages.

20. Considering the fact that Tribunal has adequately considered the fact and also given its own reasoning for arriving at the conclusion, it cannot be said that judgment of the Industrial Tribunal/Labour Court has been passed without any application of mind and without giving any independent reasoning. The aforesaid judgments cited by learned counsel for

petitioner would not apply to the facts of the present case where the Tribunal has given its reasoning for accepting the claim of the workman.

21. The next contention raised by the petitioner is that considering the fact that there were allegation of theft against the workman, the principle of loss of confidence would come into play and on the said circumstances the workman doesn't have any right to be reinstated.

22. It is noticed that the Industrial Court had proceeded ex-parte against notice to petitioners was duly served and despite service they did not put in appearance and hence the award was passed ex-parte. Had the petitioners put in appearance before the Labour Court and raised their plea before it, it could have been duly considered by the Labour Court at that stage. This Court in exercise of power under Article 226/227 of the Constitution of India would not consider the application on principle of loss of confidence for the first time in the writ proceedings. Even otherwise, loss of confidence is a question of fact and law and cannot be accepted merely on the statement of the petitioner. Despite their being serious allegations against the workman admittedly no domestic inquiry was conducted against him nor any chargesheet or notice given to him and his services were dispensed with by oral order of termination.

23. The termination of the workman is clearly illegal and arbitrary and in violation of provisions of Section 6(N) of Act of 1947. The workman cannot be denied the relief granted by the Tribunal on any other count as stated by the petitioner in the present writ petition. This Court does not find nay merits in the writ petition and is accordingly dismissed.

(Alok Mathur, J.)

Order Date :- 2.11.2023

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