SUPREME COURT OF INDIA

H. D. Sharma

Versus

Northern India Textile Research Association

(S. Saghir Ahmad and Y. K. Sabharwal, JJ.)

Civil Appeal No. 2646 of 1999.

28.03.2000

JUDGMENT

Y. K. Sabharwal, J. - The appellant was ordered to be dismissed from service in terms of the dismissal order dated 24th April, 1987 passed by the employer-respondent No. 1. The said order is said to have been passed considering the report of the Inquiry Officer in respect of the charges levelled against the appellant. Section 6-E(2)(b) of the UP Industrial Disputes Act, 1947 (For short, `the Act'), *inter alia* stipulates that during the pendency of any proceedings in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to a workman concerned in such dispute, for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman. The proviso to the said section, however, stipulates that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceedings are pending for approval of the action taken by the employer. On account of pendency of industrial disputes in Reference Proceedings in Adjudication Case No. 53 of 1986, respondent No. 1, as required by the aforesaid section, moved an application dated 27th April, 1987 before the Industrial Tribunal seeking approval of the order of dismissal. The said application was registered as Miscellaneous Case No. 7 of 1988. It was resisted by the appellant. In reply the appellant *inter alia* disputed that he was paid one month's wages as required by Section 60E(2)(b) of the Act. An application was also moved by the appellant before the Industrial Tribunal stating that he has not been paid HRA as well as CCA which was payable to him and, therefore, the employer has not paid to him full month wages payable under Section 6-E(2)(b).

2. After the dismissal order was made, the appellant raised an industrial dispute challenging his dismissal and the State Government made a reference under Section 4-K of the Act for adjudication of the said dispute by the Industrial Tribunal. This was registered as Adjudication Case No. 31 of 1988. The dispute referred was as follows:

> "Whether dismissal order dated 24th April, 1987 passed by the employer against workman Hari Dutt Sharma, son or Kishan Chand Sharma, General Clerk-cum-Duplicating Machine Operator is legal

and\or justified ? If not, then to what benefit\relief the workman is entitled for and with any other details ?"

3. Respondent No. 1, by its application dated 21st January, 1990, sought permission of the Industrial Tribunal to withdraw the approval application. The said application was dismissed by the Industrial Tribunal by order dated 29th June, 1990.

4. The order dated 29th June, 1990 was challenged by respondent No. 1 in a writ petition filed in the High Court. By impugned judgment dated 11th February, 1998, learned Single Judge of the High Court has set aside the order of the Tribunal dated 29th June, 1990 and has directed the Tribunal to allow the withdrawal of the application filed under Section 6-E(2)(b) of the Act.

5. The only reason given by the High Court for setting aside the order of the Tribunal is that two parallel proceedings - one under Section 6-E(2)(b) and the other on reference under Section 4-K of the Act relating to same matter cannot be allowed to continue and that the point raised in the application under Section 6-E(2)(b) can be agitated and finally disposed of in a more effective manner if the proceedings are taken on the basis of application under Section 4-K of the Act.

6. We are unable to sustain the aforesaid reasons given by the High Court. The scope of proceedings under the two provisions is substantially different. Separate rights, remedies and protections have been provided under Section 6-E(2)(b) of the Act. The proceedings under Section 4-K of the Act would not come to an end on grant of approval to the employer under Section 6-E(2)(b) of the Act. It cannot be said that two proceedings - one under Section 6-E(2)(b) and other on reference under Section 4-K of the Act - cannot be continued at the same time. We do not have the benefit of the viewpoint of the High Court on various grounds stated by the tribunal in the order declining permission to respondent No. 1 to withdraw the approval application. Since we propose to remand the matter to High Court for fresh decision of the writ petition, we refrain from expressing any opinion on the reasons given in the order of the tribunal dated 29th June, 1990 which have not been dealt by the High Court nor do we consider it appropriate to express opinion at this stage on the consequences of withdrawal of the approval application or prayer for such withdrawal can be declined or not. In short, we keep open all questions considered by the Industrial Tribunal.

7. In view of the aforesaid, we set aside the impugned judgment of the High Court and direct the High Court to decide the matter afresh. We would request the High Court to decide the writ petition preferably within a period of three months. The appeal is accordingly disposed of. Parties are, however, left to bear their own costs.

Order accordingly.