SUPREME COURT OF INDIA

State of U.P. & Anr.

Vs.

Rishipal

C.A.No.1180 of 2008

(Ashok Bhan and Dalveer Bhandari,JJ.)

08.02.2008

ORDER

[Arising out of S.L.P.(C)No.12237 of 2006]

1. Leave granted.

2. The management is in appeal before us. The respondent-workman (for short 'the respondent') was employed by the appellants on 01st January 1990 on daily wages as Cook helper in Upper Ganga Canal, Modernization Division-6, Roorkee. His services are alleged to have been terminated on 31st March 1992. After a gap of nearly six years, viz., in the year 1998, respondent filed an application for conciliation before Assistant Labour Commissioner and Conciliation Officer which was registered as Adjudication Dispute No.119 of 1998. The Labour Court, in its award passed on 29th August 1998, came to the conclusion that the respondent having approached the Labour Court after a lapse of five/six years, the right of the workman stood dissolved and held that his case had become stale and he was not entitled to any relief. For coming to this conclusion, the Labour Court relied on a judgment of the Punjab & Haryana High Court in the case of *Balwant Singh v. Labour Court, Bhatinda*[1] decided on 25.5.1995. On the basis of muster C.A.No.1180/08 rolls produced by the appellants, the Labour Court also held that the workman had not worked for more than 240 days in a calender year and, therefore, no industrial dispute existed. The Labour Court, therefore, adjudicated the reference against the respondent. The said award is stated to have been published in the Official Gazette. After a gap of about two years, the respondent filed an application for review/restoration of the dispute. Vide award dated 31th May 2001, the same Presiding Officer of the Labour Court reviewed its earlier award which had been published in the Official Gazette. The Labour Court, by the said award, reversed its earlier findings and relying on a judgment of this Court in the case of *Ajaib Singh v. Sarhind Cooperative Marketing-cum-Processing Service Society*[1] decided on 8.4.1999 held that only because of delay no dispute can be dismissed. So far as the working for more than 240 days was concerned, on the basis of the same muster rolls which were relied upon while passing the earlier award, it was held that the obstruction had been caused so that the continuity in service of the workman was disrupted. However, relying on the attendance register produced

by the workman, it was held that the workman would be deemed to have worked for more than 240 days and the benefits/rights provided under Section 6N of the U.P. Industrial Disputes Act, 1947 [which is equivalent to Section 25F of the Industri al C.A.No.1180/08 .... (contd.) - 3 - Disputes Act, 1947] accrued to him and could not be denied to him. Management, being aggrieved, filed writ petition before the High Court contending, inter alia, that since the Labour Court had entertained the application for review/restoration of the dispute after 30 days of publication of the earlier award in the Official Gazette, it had become functus officio and had no jurisdiction to review/restore it s own award. It was also contended that the respondent had not worked continuously for more than 240 days in a calendar year and, therefore, the finding recorded by the Labour Court was illegal and against the evidence on record. A learned Single Judge of the High Court, by the impugned order dated 04th August 2005, dismissed the writ petition and agreed with the findings recorded by the Labour Court vide its award dated 31st May 2001. Aggrieved by the said order, the appellants have filed the present appeal by special leave. The contentions raised before the High Court are reiterated by the counsel for the appellants before us also. Learned counsel for the appellants is right in submitting that the Labour Court had become functus officio after the lapse of 30 days of publication of the award and, therefore , could not entertain the petition for review. Thus, the subsequent order passed by the Labour Court is beyond the C.A.No.1180/08 .... (contd.) - 4 - jurisdiction vested in it. Even otherwise, the muster rolls produced by the appellants before the Labour Court clearly show that the respondent had worked from November 1990 to March 1991 and then from November 1991 to March 1992. During the two periods put together the respondent had worked for 203 days. Evidently, the respondent had not completed a continuous period of 240 days in a calendar year. There was a gap of eight months between March 1991 and November 1991 when he was re-employed. Gap of eight months could not be termed as notional break. The Labour Court has recorded in both its awards that the Management had produced copies of Muster Rolls for the period from January 1990 to March 1992. Still, the Labour Court drew an adverse inference against the Management that the obstruction was caused by the Management so that the continuity in service of the respondent could not be achieved. It is evident that the said finding was arrived at by the Labour Court in its second award when no one represented the Management. Consequently, the finding recorded by the Labour Court that the workman had worked for more than 240 days cannot be sustained. For the reasons stated above, we are of the opinion that the Labour Court erred in answering the reference in the affirmative and in favour of the respondent-workman. Consequently, the impugned order of the High Court also cannot be sustained. Accordingly, the appeal is accepted, the C.A.No.1180/08 .... (contd.) - 5 - order under appeal as well as that of the Labour Court dated 31st May 2001 are set aside and the reference is answered in the negative, i.e., against the respondent-workman. No costs.

Judgment Referred.

[1]*(1999) 6 SCC 0082*