

LAWS(ALL)-2018-2-66

HIGH COURT OF ALLAHABAD

Coram : Siddhartha Varma J.

Decided On : February 01,2018

Appeal Type : Writ C 32146 of 2013

Final Verdict : Petition allowed

Appellants :

CIVIL AVIATION TRAINING COLLEGE BAMRAULI ALLD THRU PRIN

Vs.

Respondents :

MOHAN LAL PRAJAPATI

Advocates :

S.SHEKHAR,V.K.SINGH,ASHISH SRIVASTAVA

Equivalent Citation :

LAWS(ALL)-2018-2-66, FLR-2018-157-670, LLR-2018-0-758

Referred Judgement :

MUKAND LTD VS. MUKAND STAFF and OFFICERS ASSOCIATION, [2004 101 FLR 219]
[REFERRED TO]

Referred Act :

CONTRACT LABOUR (REGULATION AND ABOLITION) CENTRAL RULES, 1971

HeadNote :

(1) Contract Labour (Regulation And Abolition) Central Rules, 1971 ::

JUDGMENT :

Siddhartha Varma, J.

- (1.) Rejoinder affidavit filed today be kept on record.
- (2.) Heard Sri V.K.Singh, learned senior counsel for the petitioner assisted by Sri Prakhar Tandon and Sri S. Shekhar, Advocates.
- (3.) The respondent-Mohan Lal Prajapati upon being aggrieved by the fact that the petitioner had illegally terminated his service raised an industrial dispute which was referred by the Central Government to the Central Industrial Tribunal /Labour Court, Kanpur. The reference as was made on

31.10.2001 is being reproduced here as under: <Spara>"Whether the action of the management of Civil Aviation Training College, Bamrauli, Allahabad, in terminating the services of Sri Mohan Lal Prajapati with effect from 1.9.1996 is justified? If not to what relief the workman is entitled?"</Spara>

(4.) Even before the raising of the dispute the respondent had approached this Court by means of Writ Petition No. 39825 of 1999 along with two other petitioners and this Court on 24.10.2000 had stated that since the question whether the petitioners therein were employees of the Authority had to be decided they were directed to raise appropriate industrial disputes before the appropriate Tribunal. After the matter was referred, pleadings were exchanged and an award was passed on the premise that the workman's retrenchment was done without any notice and thereafter he was reinstated with 50 per cent back wages. The petitioner-Civil Aviation Training College, Bamrauli, Allahabad through its Principal approached this Court by means of this writ petition.

(5.) Learned counsel for the petitioner submitted that the workman-respondent was never employed by the petitioner. In fact, before the Tribunal there was absolutely no document which went to indicate that the workman-respondent was ever employed directly by the petitioner. In the written objection which the petitioner had filed before the Central Industrial Tribunal/Labour Court, Kanpur, it was stated that the respondent-workman was employed through a contractor and that payments were being made to the contractor and the contractor paid wages to the respondent. Learned counsel for the petitioner has further taken recourse to the counter affidavit which was filed by the workman and read out the contents of paragraph-10 of the counter affidavit which are being reproduced here as under: <Spara>"10. That although the deponent has worked continued about 5 years w.e.f. 01.09.1994 to 31.8.1999 under the petitioner, but his wages were paid to (sic) different suppliers time to time to deprive the deponent from his legal right and even he has not been paid minimum wages fixed under the Minimum Wages Act."</Spara>

(6.) In the end he submitted that since the workman - respondent was never under his engagement, there was no question of giving him a notice for retrenchment after he had put in more 240 days.

(7.) Sri Sunil, Advocate holding brief of Sri Ashish Srivastava stated that the workman had no other access to the the petitioner other than the employment which had been provided to the workman by the petitioner and that he was employed directly by the petitioner and he was also paid his wages by the petitioner. The workman further had taken recourse to certain documents and diaries maintained by him to prove that he was getting his wages which were paid to him by the petitioner.

(8.) Learned counsel for the respondent further submitted that there was no oral evidence led by the petitioner and, therefore, whatever evidence was led by the workman had to be taken at its face value.

(9.) Having heard the learned counsel for the parties, I am of the view that the Labour Court passed the order on a wrong premise. Despite the fact that an objection was raised by the petitioner that the matter was not cognizable by the Industrial Labour Tribunal / Labour Court, Kanpur and that the workman was not an employee of the petitioner at all, the Labour Court proceeded to adjudicate on the reference. A Labour Court is a Court of reference. It has to confine itself to the reference which made. When the reference was as to whether the workman's services were terminated with effect from 1.9.1999 then the Labour Court first had to see if the workman was employed with the petitioner at all

and then had to see if services of the workman was at all terminated. In (Mukand Ltd. vs. Mukand Staff and Officers Association, 2004 101 FLR 219 (SC)), the Supreme Court has held that if the Reference Court goes beyond the reference then it transgresses its jurisdiction.

(10.) Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules).

(11.) Under such circumstances, the award 14.10.2011 passed by the Industrial Tribunal cum Labour Court, Kanpur is quashed.

(12.) The writ petition is allowed. However, if the workman raises his claim before the authority as has been nominated under the 1971 Rules it shall be looked into and decided within a period of six months.