

RAM NAYAK  
v.  
U.P. STATE SUGAR CORPORATION

AUGUST 31, 2007

[TARUN CHATTERJEE AND D.K. JAIN, JJ.]

*U.P. Sugar Undertaking Acquisition Act, 1971—ss. 10 r/w 16 (3)—Acquisition of a sugar Undertaking under the Act—Employee claiming to be working in erstwhile Undertaking on the 'appointed day'—Termination of the employee by oral order—Labour Court holding the oral termination as bad and directing reinstatement—High Court setting aside the award in view of s. 16 (3)—On appeal, held: A finding whether the employee was working under the earstwhile employer on the 'appointed day', was necessary—Hence employee directed to approach the prescribed Authority u/s 10 r/w s. 16 (3) for such finding—Labour Laws.*

The undertaking in which the appellant-employee was working vested with the respondent-Company under U.P. Sugar Undertaking Acquisition Act, 1971. The services of the appellant was terminated by an oral order. Appellant raised industrial dispute claiming that he was working under the erstwhile undertaking on the "appointed day" under the Act. Labour Court held the termination bad and directed his reinstatement with continuity of service and back wages. The award was challenged in Writ Petition. High Court allowed the petition solely on the ground that award was bad in view of s. 16 (3) of the Act. Hence the present appeal.

Disposing of the appeal, the Court

**HELD:** 1. In view of Section 10 read with Section 16(3) of U.P. Sugar Undertaking Acquisition Act, 1971, a finding whether the appellant was working under the respondent on the "appointed day" under the Acquisition Act was necessary. For that purpose, it would be appropriate to direct the appellant to approach the prescribed authority under Section 10 read with Section 16(3) of the Act for a finding whether he was exclusively employed in connection with the scheduled undertaking before the appointed day as the Acquisition Act, being a special act, is conferred with the power to make such a finding. [Para 4] [667-D, E]

- A** 2. In the event, the prescribed authority comes to a finding that the appellant was working with the scheduled undertaking on the appointed day, the Writ Petition filed by the Corporation before the High Court shall automatically stand restored and the High Court shall, thereafter, decide the Writ Petition on merits after taking into consideration the findings arrived at by the prescribed authority in compliance with directions of this Court made in this regard. If, however, the prescribed authority comes to a finding that the appellant was not working with the erstwhile employer on the appointed day, this appeal shall stand dismissed and the award shall also stand set aside.
- B**
- [Para 5] [667-G; 668-A]

- C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4008 of 2007.

From the final Order dated 10.7.2006 of the High Court of Judicature at Allahabad in C.M.W.P. No. 5385/1998.

Bharat Sangal and Abhinav Ramkrishna for the Appellant.

- D** Rakesh Uttamchandra Upadhyay and Ajay Rai for the Respondent.

The Judgment of the Court was delivered by

**TARUN CHATTERJEE, J.** 1. Leave granted.

- E** 2. This appeal, by grant of special leave, is directed against the final judgment and order dated 10th July, 2006 passed by the Allahabad High Court in Civil Miscellaneous Writ Petition No.5385 of 1998 whereby the High Court had allowed the writ petition filed by the respondent and set aside the award dated 5th June, 1997 passed by the Presiding Officer, Labour Court, Varanasi, U.P. in Adjudication Dispute No.89 of 1994 directing re-instatement of the appellant with continuity of service and payment of full back wages by the respondent - U.P. State Sugar Corporation (for short 'the Corporation').
- F**

3. The following reference was made for adjudication before the Labour Court :

- G** *"Whether the termination of service by the employer of their workman Ram Nayak from 1st June 1990 was bad or invalid."*

- The said reference came to be registered as Adjudication Dispute No.89 of 1994 before the Presiding Officer, Labour Court, Varanasi, U.P. The appellant claimed that he was working under the erstwhile Ratna Sugar Mills on the
- H**

"appointed day" under the U.P. Sugar Undertaking Acquisition Act, 1971 (hereinafter referred to as "the Acquisition Act"). On and from 24/4/1989, Ratna Sugar Mills had vested with the Corporation as the said date was the "appointed day" under Section 2(A) of the Acquisition Act. However, the service of the appellant was terminated by an oral order for which the reference was made. The Labour Court, after considering, both the oral and the documentary evidence on record, held that the oral termination order was bad and, therefore, directed re-instatement of the appellant in the Corporation with continuity of service and back-wages. This award was challenged by the Corporation before the High Court by way of a writ petition. As noted herein above, the High Court allowed the writ petition and set aside the award passed by the Labour Court solely on the ground that the award could not be allowed to stand in view of Section 16(3) of the Acquisition Act. We may keep it on record that the High Court, while setting aside the award, had not gone into the merits whether the appellant had failed to prove that his oral termination order was bad or invalid in law.

4. Feeling aggrieved by the judgment of the High Court, this appeal has been preferred by the appellant. After hearing the arguments advanced by the learned counsel for the parties and considering the provisions of Section 10 read with Section 16(3) of the Act, we are of the firm opinion that a finding whether the appellant was working under the respondent on the "appointed day" under the Acquisition Act was necessary. For that purpose, it would be appropriate to direct the appellant to approach the prescribed authority under Section 10 read with Section 16(3) of the Act for a finding whether he was exclusively employed in connection with the scheduled undertaking before the appointed day as we are of the view that the Acquisition Act, being a special act, is conferred with the power to make such a finding.

5. In this view of the matter, we feel it proper and appropriate to direct the appellant to approach the "prescribed authority" under Section 10 read with Section 16(3) of the Act for a finding on the aforesaid question. The appellant shall approach the prescribed authority by making an application within eight weeks from this date. The prescribed authority shall thereafter determine the question within two months from the date of filing of the application before it by the appellant after giving due hearing to the parties and permitting them to lead evidence. In the event, the prescribed authority comes to a finding that the appellant was working with the scheduled undertaking on the appointed day, the writ petition filed by the Corporation before the High Court shall automatically stand restored and the High Court

- A shall, thereafter, decide the writ petition on merits after taking into consideration the findings arrived at by the prescribed authority in compliance with our directions made in this regard. If, however, the prescribed authority comes to a finding that the appellant was not working with the erstwhile employer on the appointed day, this appeal shall stand dismissed and the award shall also stand set aside. The appeal is disposed of in the manner indicated above.
- B There will be no order as to costs.

K.K.T.

Appeal disposed of.