A IRRIGATION RESEARCH INSTITUTE & ANR.

v.

KRIPAL SINGH

DECEMBER 7, 2007

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[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Uttar Pradesh Industrial Disputes Act, 1947—s.6(N)—Industrial Dispute—Alleging violation of the provision in termination of service—
C *Delay of 8 years in raising the dispute—Computation of working days—Labour Court holding it to be less than 240 days—High Court holding it to be more than 240 days opining that holidays were not taken into account by Labour Court—On appeal held: Order of High Court was without analysis of factual position—Since there is*
D *confusion regarding inclusion of holidays in computation of working days, matter remitted to Labour Court—Relief could be modulated by the Court in view of the delay.*

Respondent-workman raised industrial dispute alleging that
E **termination of his services without prior notice was in violation of the provisions of Section 6(N) of U.P. Industrial Disputes Act, 1947. Labour Court held that the respondent had not worked for 240 days in a calendar year. Therefore, there was no violation of Section 6(N). In Writ Petition, challenging the award, High Court held that Labour Court computed the working days excluding the holidays and that if**
F **holidays were taken into account, the workman had worked for more than 240 days. High Court negated the plea of delay in raising the dispute of 8 years. Order was passed in favour of the workman. Hence the present appeal.**

G **Partly allowing the appeal, and remitting the matter to Industrial Tribunal, the Court**

HELD: The authenticity of the muster rolls produced was not questioned by the respondent-workman. Effect of a dispute raised

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after about 8 years was also not considered. It is not in dispute that the Labour Court cannot refuse to answer the reference because of delayed approach. But it can certainly modulate the relief. The High Court had not analysed the factual position. The High Court, in fact, failed to notice that the Labour Court had taken into account the actual days, when the respondent worked and the number of holidays to be taken into account. Thereafter it held that the workman had, in fact, worked for 220 days. Since there is a similar amount of confusion as to whether the holidays have been computed or not and whether the workman had actually worked for more than 240 days, the matter is remitted to the Tribunal to compute the actual days for which the respondent had worked and then modulate the relief if any to be granted taking into account the delayed approach.

[Para 8] [1147-A, B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5680 of 2007.

From the Judgment and Order dated 18.11.2005 of the High Court of Uttaranchal at Nainital in Writ Petition No. 866 of 2004 (M.S.).

Abhishek Atrey and P.N. Gupta for the Appellants.

Amita Gupta for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of the learned single judge of the Uttranchal High Court at Nainital allowing the writ petition filed by the respondent.

3. Background facts in a nutshell are as follows:

Respondent raised dispute stating that his alleged removal from service without any prior notice was in violation of the provisions of Section 6(N) of the UP Industrial Disputes Act, 1947 (in short the 'Act'). A reference was made to the Labour Court to adjudicate the following question.

A "Whether the termination of the services of Sri Kripal Singh s/o Sri Udal Singh, Beldar by the employers from 4.6.1992 is justified and/or legal? If no, to which benefit/compensation the concerned workmen is entitled and to what extent?"

B 4. It is to be noted that the stand of respondent was that he had worked as a Beldar on muster roll from 1.2.1991 to 3.6.1992 in the H-2 Division and he was removed from service with effect from 4.6.1992 without notice. The Labour Court on considering the oral and documentary evidence held that the respondent had not worked for 240 days in any calendar year and, therefore, the question of any violation on C Section 6(N) of the Act did not arise. The order of the Labour Court was challenged in the writ petition. The High Court found that the Labour Court did not consider the fact that the number of days mentioned in the statement of the present appellants was the same as those appearing in the muster rolls produced. It was concluded that the muster roll clearly D indicated the number of days on which the workman had actually worked and not those along with holidays. On inclusion of the number of holidays mentioned, the respondent had worked for more than 240 days. The High Court did not find any substance in the plea of the present appellants concerning the dispute being raised after about eight years.

E 5. Learned counsel for the appellant submitted that the respondent-workman had himself stated that he was always ready and willing to do the work and since the employer did not give him work, therefore, the working days of the entire month are to be accounted for on that basis. F He had made the calculations showing that he had worked for 308 days. It is pointed out that the Labour Court categorically held that the details filed and examined by the Labour Court clearly indicated that holidays to be computed in accordance with prevalent statutes have been included while working out the details of the case on which the workman had G worked. The High Court also did not consider the effect of the present dispute which was raised after about 8 years.

6. Learned counsel for the respondent on the other hand submitted that the High Court had applied the correct principles of law.

H 7. The factual dispute presently raised is not really relevant.

8. It is to be seen that the authenticity of the muster rolls produced was not questioned by the respondent-workman. Effect of a dispute raised after about 8 years was also not considered. It is not in dispute that the Labour Court cannot refuse to answer the reference because of delayed approach. But it can certainly modulate the relief. The High Court had not analysed the factual position. The High Court, in fact, had failed to notice that the Labour Court had taken into account the actual days, when the respondent worked and the number of holidays to be taken into account. Thereafter it held that the workman had, in fact, worked for 220 days. Since there is a similar amount of confusion as to whether the holidays have been computed or not and whether the workman had actually worked for more than 240 days, we remit the matter to the Tribunal to compute the actual days for which the respondent had worked and then modulate the relief if any to be granted taking into account the delayed approach. We make it clear that we have not expressed any opinion on merits.

9. The appeal is allowed to the aforesaid extent with no order as to costs.

K.K.T. Appeal partly allowed.