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RAM GOPAL DWIVEDI

v.

M/S KANPUR ELECTRICITY SUPPLY CO. LTD. THROUGH
ITS GENERAL MANAGER

B

(Civil Appeal No. 8125 of 2009)

JULY 25, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Labour Laws:

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*Industrial dispute – Raised after termination of services of the appellants-workmen – Labour Court held the termination of workmen as illegal and directed their reinstatement with 50% back wages – High Court relying on *Shiv Mohan Singh case set aside the order of Labour Court – On appeal, held: Facts of Shiv Mohan Singh’s case is identical to the facts of the present case – High Court rightly relied on that case – Appeals dismissed.*

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**U.P. State Electricity Board v. Shiv Mohan Singh & Anr. (2004) 8 SCC 402 : [2004] 4 Suppl. SCR 953 – relied on.*

E

Case Law Reference

[2004] 4 Suppl. SCR 953 relied on. Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8125 of 2009.

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From the Judgment and Order dated 02.07.2007 of the High Court of Judicature at Allahabad in C. M. Writ Petition No. 10377 of 1998.

WITH

C. A. No. 8126 of 2009.

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Satya Mitra Garg, Ms. Manju Aggarwal, Advs. for the Appellant.

Dr. Rajeev Sharma, Dharmendra Sharma, Vipin Kumar Sharma, Raghuvir Sharma, Haji Salimuddin, Advs. for the Respondent.

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The Judgment of the Court was delivered by A

ABHAY MANOHAR SAPRE, J. 1. Both these appeals are filed against the final common judgment and order dated 02.07.2007 passed by the High Court of Judicature at Allahabad in C.M.W.P Nos.10377 and 10389 of 1998 whereby the High Court allowed the writ petitions filed by the respondent herein and set aside the awards dated 29.08.1996 and 28.02.1997 given by the Presiding Officer, Labour Court (III) Kanpur in Adjudication Case Nos. 136 of 1994 and 129 of 1994 by which the Labour Court held that the termination of the appellants illegal and directed their reinstatement and payment of 50% back wages. B

2. We herein set out the facts, in brief, to appreciate the issue involved in these appeals. C

3. The respondent is a unit of the U.P. State Electricity Board (hereinafter referred to as "the Board"). It is known as Kanpur Electricity Supply Company Ltd. (for short KESC). The terms and conditions of the employees working with the respondent are governed by the statutory regulations framed by the Board in exercise of its powers under Section 78 (c) of the Electricity (Supply) Act, 1948. D

4. The appellants were engaged by the respondent to work in their set up as trade Apprentices under the Apprentices Act, 1961. In terms of the agreement, they were to undergo training in the trade of Boiler Attendant/Cable Jointer. Their period of training was 3 years. It was to come to an end after the expiry of contract period. E

5. The respondent accordingly terminated the services of the appellant in C.A. No. 8125 of 2009 on 01.08.1989 and the appellant in C.A. No. 8126 of 2009 on 13.07.1990. This gave rise to the dispute between the appellants and the respondent, which led to making of the industrial reference to the Labour Court, Kanpur to decide as to whether the termination of the appellants from the services was legal or/and proper and, if so, what relief the appellants are entitled to? F

6. Parties filed their statements and adduced evidence before the Labour Court. By awards dated 29.08.1996 and 28.02.1997, the Labour Court answered the reference in appellants' favour. It was held that, (i) the appellants were not paid any retrenchment compensation before terminating their services; (ii) no inquiry was held; (iii) the appellant having served with the respondent for more than two years, they were G

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A entitled to the protection of labour laws. The Labour Court, therefore, set aside the termination order and directed reinstatement of the appellants together with payment of 50% of back wages.

B 7. The respondent (employer), felt aggrieved of the awards, filed writ petitions before the High Court at Allahabad and questioned its legality and correctness. By impugned judgments, the High Court allowed the writ petitions and set aside the awards of the Labour Court. The High Court held that the case at hand are fully covered by the decision of this Court in **U.P. State Electricity Board vs. Shiv Mohan Singh & Anr.**, (2004) 8 SCC 402 against the appellants and hence the Labour Court erred in answering the reference in appellants' favour by setting
C aside the termination order and directing the appellants' reinstatement in service with 50% payment of back wages. It was held that the reference should have been answered in respondent's favour by upholding the appellants' termination as legal and proper.

D 8. The appellants, felt aggrieved by the impugned judgments, have filed these appeals by special leave before this Court.

9. Heard Mr. Satya Mitra Garg, learned counsel for the appellants and Dr, Rajeev Sharma, leaned counsel for the respondent.

E 10. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

F 11. In our considered opinion, the High Court was fully justified in placing reliance on the decision rendered by this Court in the case of **U.P. State Electricity Board** (supra) for allowing the respondent's writ petitions and setting aside of the awards of the Labour Court. Indeed, the facts of this case and of **U.P. State Electricity Board's case** (supra) are almost identical.

12. In fact, we find that in both the cases, the employees were working as Boiler Attendant/Cable Jointer in UPSEB and were appointed as Apprentices.

G 13. This Court (Three Judge Bench) in the case of **U.P. State Electricity Board** (supra) examined the provisions of Apprentices Act, 1961 in the context of U.P. Industrial Disputes Act, 1947 and then applying the law laid down in the case set aside the award of the Labour Court and upheld the termination.

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14. This would be clear from the facts set out from the case of **U.P. State Electricity Board** (supra) in para 63 which reads as under: A

“63. Respondent 1 Shiv Mohan Singh was appointed as an apprentice Boiler Attendant under the Apprentices Act, 1961 from 11-4-1985 to 10-4-1988 and underwent training of the U.P. State Electricity Board. His contract was drawn up but not registered with the Apprenticeship Adviser. He completed his three years’ training and a certificate to this effect was issued to him and he was directed to appear before the National Council and on passing thereof he was to be awarded a certificate of proficiency as a Boiler Attendant. From this fact it is apparent that he was appointed as an apprentice trainee in the designated trade of Boiler Attendant. After completion of his training his services were terminated on 10-4-1988. It is clear from this fact that he was a Boiler Attendant. He completed three years’ training and after end of the training he was relieved as per the terms and conditions of the appointment as an apprentice in designated trade of Boiler Attendant and therefore he cannot be declared to be a worker under the Act and he cannot claim the benefit of Section 25-F of the Industrial Disputes Act, 1947 or under Section 6-N of the U.P. Industrial Disputes Act, 1947. In this light the award given by the Labour Court in Award Dispute No. 166 of 1991 dated 12-8-1993 and the order dated 26-9-2002 passed in WP No. 21560 of 1995 by the High Court cannot be sustained. Civil appeal is allowed. Both the orders of the High Court dated 26-9-2002 and the award of the Labour Court dated 12-8-1993 are set aside.” B C D E F

15. As mentioned supra, the facts of both the cases appear identical. In this view of the matter, the High Court, in our view, was justified in placing reliance on the decision of this Court in **U.P. State Electricity Board** (supra) and rightly allowed the respondent’s (employer’s) writ petitions and set aside the awards of the Labour Court. It is rather unfortunate that the Labour Court did not take note of the law laid down in **U.P. State Electricity Board’s case** and wrongly set aside the termination orders. We, therefore, concur with the reasoning and the conclusion arrived at by the High Court and uphold the impugned judgment. G

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A 16. In view of foregoing discussion, we find no merit in the appeals, which thus fail and are accordingly dismissed.

Kalpana K. Tripathy

Appeals dismissed.