

Court No. - 7

Case :- WRIT - C No. - 10376 of 2015

Petitioner :- State Of U.P. Thru' E.E., Irrigation Dept.

Respondent :- Presiding Officer/Labour Court And 2 Ors.

Counsel for Petitioner :- K.K. Roy, Addl. C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

Heard Sri K.K. Rai, learned Additional Chief Standing Counsel for the petitioner.

This writ petition was earlier heard on 23.2.2015 and the following order was passed:

"Heard Sri K.K. Rai, learned Additional Chief Standing Counsel for the petitioner.

Sri Rai submits that the impugned order dated 16.5.2014 has been passed by respondent no.2 without recording any finding that the petitioner was not in any job from the date of the award till he was permitted to join in compliance to the award dated 18.11.1999. He submits that the respondent no.2 has directed to pay a sum of Rs. 5,53,188/- to the respondent no.3 without giving any basis for computation and also without adjusting 50% of the amount of recovery certificate. However, neither the application of respondent no.3 nor the reply of the petitioner filed before the respondent o.2 have been brought on record nor any pleadings in this regard have been made in the writ petition.

Sri Rai prays for and is granted three days time to file a supplementary affidavit. As prayed, put up on 26.2.2015."

In compliance to the aforequoted order, a supplementary affidavit of Sri R.B. Mishra, Assistant Engineer, Irrigation Division-II, Deoria has been filed today which is taken on record. In paragraph Nos. 9 and 12 of the said supplementary affidavit the following submissions have been made:

"9. That the petitioner respectfully submits that the department had also quantified it on the basis of the relevant Government order and calculated it to the tune of Rs. 4,48,196.00 which is lesser by Rs. 94,992.00 as quantified by the Respondent-employee.

12. That the Respondent No.1 also totally ignored the fact and there is no finding that whether during the period of the discontinuation, the Respondent-employee was under some gainful employment or not to decide the matter of the payment of the back-wages treating the employee in the continuity of service."

It is not in dispute that an award dated 18.11.1999 was passed in favour of the Respondent No.3. The said award was challenged by the petitioner in Writ Petition No. 29249 of 2001 which was dismissed by this Court vide order dated 31st July, 2012. Against this order petitioner filed SLP No. CC 12857 of 2013 which was dismissed by Hon'ble Supreme Court by observing: "*Special Leave petition is dismissed both on grounds of delay and on merits.*" It appears that thereafter the Respondent No.2 has passed the impugned order dated 12th May, 2014 on the application of the respondent No.3 under Section 6 H (1) of the U.P. Industrial Dispute Act. In the aforesaid impugned order the Respondent No.2 has computed the amount payable to the Respondent No.3 to be Rs. 5,43,188. According to the learned counsel for the petitioner the computation so made by the Respondent No.2 is incorrect. He submits that in paragraph 9 of the supplementary affidavit it has been stated that on the basis of the relevant

government order the calculation comes to Rs. 4,48,196/- He submits that the petitioners could not submit this computation before the Respondent No.2 and, as such, the Respondent No.2 may be directed to pass a fresh order after considering the computation which shall be filed by the petitioner before the Respondent No.2 within three weeks from today.

In view of the above of the submissions it appears appropriate that the matter may be remitted back to the Respondent No.2 to recompute the amount after considering the objection/computation chart of the petitioner.

Under the circumstances, the impugned order dated 16.5.2014 is set aside and the matter is remitted back to the Respondent No.2 to pass a fresh order in accordance with law within three months from the date of production of a certified copy of this order, provided the petitioner deposits Rs. 2,50,000/- within four weeks with the Respondent No.2 which the Respondent No.2 shall keep in a fixed deposit in a nationalized bank and which shall be subject to the decision to be taken by him under Section 6 H (1) of the Act.

The writ petition is allowed to the extent indicated above.

Order Date :- 26.2.2015

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