

CASE NO.:
Appeal (civil) 6227 of 2004

PETITIONER:
Prabhu Dayal

RESPONDENT:
Sadhan Sahkari Samiti Mujuri Vikas Khand Paniyara & Ors

DATE OF JUDGMENT: 27/02/2008

BENCH:
Dr. ARIJIT PASAYAT & C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.6227 OF 2004

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of the learned Single Judge of the Allahabad High Court allowing the writ petition filed by respondents - Sadhan Sahkari Samiti Mujuri Vikas Khand Paniyara (hereinafter referred to as the 'Cooperative society'). Challenge in this appeal was to the recovery order issued by the labour authorities on the basis of a compromise award.

2. Background facts in a nutshell are as follows:

Appellant was appointed as Salesman in the respondent-society which had four employees, as such the labour laws were not applicable to it. But the appellant filed cases under the Payment of Wages Act, 1963 (in short the 'Act') which were allowed and the society was directed to pay a sum of Rs.4,830/-. In pursuance of the direction in terms of Section 15 of the Act, the amount was paid to the appellant in March, 1988. He again filed an application under Section 6-H of the Uttar Pradesh Industrial Disputes Act, 1947 (in short 'U.P. Act') making a grievance that he was being paid less than minimum wages payable under the Act. The said claim was also decided ex-parte. Thereafter he claimed that he had been terminated. He made grievances in that regard and on that basis a reference was made to the Labour Court, Gorakhpur which was registered as Adjudication Case no.334 of 1987. Before the Labour Court, parties entered into a settlement and an award was passed on 9.12.1988 whereunder the appellant was entitled to receive a sum of Rs.12,726/-. However, a condition was stipulated that the present appellant shall withdraw all applications and proceedings made before various authorities under the labour laws including under the Act and also under Section 6-H of the U.P. Act. The amount has been paid to the appellant. However, he did not withdraw the proceedings and wanted their continuance, and some adjudication has also been made ex-parte.

In the writ petitions, stand of the appellant-society was that Act did not apply to the society in view of the notification dated 30.6.1988. It was also urged that the U.P. Act does not apply to it as the service conditions of the appellant are

governed by statutory regulations. The High Court found substance in the plea raised by the respondent-society and allowed the writ petition and set aside the orders dated 31.12.1988, 25.9.1989, 31.3.1990, 6.9.1990 and the award dated 9.12.1988 which was made on the basis of a settlement arrived at between the parties.

Appellant has challenged legality of the High Court's order on the ground that in any event an award made on compromise cannot be set aside.

3. Learned counsel for the respondents supported the impugned judgment.

4. In Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors. (1997 (4) SCC 391), it was held that industrial laws do not apply to the employees whose service conditions are governed by statutory rules. So, U.P. Act does not apply to employees of the cooperative society. The notification dated 30.6.1988 issued under sub-section (2) of Section 26 of the Minimum Wages Act, 1948 (in short 'the Wages Act') makes the position clear that provisions of the aforesaid Act are not applicable to the service of workman employed under the societies which are registered with the Registrar of Cooperative Societies. It was indicated that the salaries and conveyance etc. paid by the registrar of the cooperative societies are also reviewed from time to time.

5. In R.C. Tiwari v. M.P. State Cooperative Marketing Federation Ltd. And Ors. (AIR 1997 SC 2652) this Court had held that in view of the arbitration clause in the Uttar Pradesh Societies Act (in short 'Societies Act') provisions of the Industrial Disputes Act are not applicable.

6. Therefore, the High Court was justified in its view. But so far as award dated 9.12.1988 is concerned, the same was made on the basis of a settlement between the parties. That being so, the High Court ought not to have set aside the award. In the ultimate result, the appeal is allowed by setting aside that part of the impugned order relating to award dated 9.12.1988. There shall be no order as to costs.