
(2008) 01 AHC CK 0031
In the Allahabad High Court

Agra Development Authority

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2008) 117 FLR 217

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Judgement

Sunil Ambwani, J.—Heard learned Counsel for the parties.

All these writ petitions arise out of the award dated 13.2.2007 given by the Labour Court, published on the notice board on 9.7.2007.

All the petitioners were employed as Class-IV employees as daily wagers as Mali, Electrician and Chowkidar in Agra Development Authority. Agra, The services of all these petitioners were terminated on 1.7.1993. They raised industrial disputes which were heard and decided by the Labour Court Agra by the impugned award.

2. In all these cases, the respondents workmen were appointed on daily wages without following any procedure for selection. The posts were not advertised nor any rules were followed. It was alleged that they had completed 240 days of work in a year, and that their services were terminated without following the provisions of Section 6-N of U.P. Industrial Disputes Act, 1947. The respondent workmen alleged that they were not given any show cause notice, charge-sheet nor any enquiry was held before terminating their services. They were also not paid notice pay nor retrenchment compensation.

3. The Labour Court after taking evidence found that all the workmen had completed 240 days and were entitled to protection of Section 6-N of the U.P. Industrial Disputes Act, 1947. The employer did not follow the due process OF retrenchment by giving notice, notice pay, retrenchment compensation and did

not inform the State Government. Their termination dated 1.7.1993 was held to be illegal and that the employer was directed to reinstate the workmen hut without benefit of back wages.

4. Sri Atul Mehra, learned Counsel for the petitioners relied upon A judgment of Supreme Court in Mahboob Deepak v. Nagar Panchayat Gajraula and Anr. Appeal (Civil) No. 5875 of 2007, decided on 13.12.2003 in which in the same circumstances, the Supreme Court found that where the appointments were made de hors the recruitment rules, and also in violation of the constitution scheme of equality as contained in Articles 14 and Id of the Constitution of India their appointments would be nullity. Where the respondent is a local authority and the terms and conditions of employment of the employees are governed by a statute "and statutory rules, the daily wagers appointed in some exigency of work, would not have a right to continue in the employment and claim the benefit of non-compliance of Section 6-N of the U.P. Industrial Disputes Act, 1947, if their services are dispensed with. The Hon"ble Supreme ("unit held in paras 8 to 14 as follows:

8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can he made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Article 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages of on an ad-hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized.

10. Applying the legal principles, as noticed hereinbefore the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non compliance of the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. Appellant was entitled to compensation notice and notice pay.

12. It is now well settled by a catena of decisions of this Curt that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See Madhya Pradesh Administration Vs. Tribhuban,

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court judgment is modified by directing payment of a sum of Rs. 50,000/-

(Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum.

14. The appeal is allowed to the aforementioned extent with costs. Counsels fee assessed at Rs. 10,000/-.

5. Sri Atul Mehra has relied upon Uttaranchal Forest Development Corporation Vs. M.C. Joshi, and Madhya Pradesh Administration Vs. Tribhuban, It is contended by Sri Atul Mehra that in all these cases the order dispensing with the services of the daily waged workmen were made by the Agra Development Authority, Agra of 17.1993, the workmen, however, raised industrial dispute by filing adjudication cases after nine years before 2002 and that award was made on 4.1.2007. It is contended that the delay in approaching the competent authorities under the Industrial Disputes Act, was not sufficiently explained. Sri Atul Mehra has relied upon the judgment in Uttaranchal Forest Development Corporation in which the Supreme Court held, relying upon the Regional Manager, UPSRTC and Anr. v. Kanml Kumar in SLP (C) 24118 decided on 19.7.2004, Haryana State Electronics Development Corporation v. Manuni 2006 (189) FLR (1000) (SC) and Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors.(sic) that the State within the meaning of Article 12 of the Constitution of India is under a constitutional obligation to comply with the provisions contained in Article 14 and 16 of the constitution of India. A daily wagger appointed without following any procedure, would not be entitled to reinstatement in the same position, and that his regularisation could not be directed unless there was any scheme existing in that behalf. In Madhya Pradesh Administration (supra) the Supreme Court held that in the cases where the State is employer and had terminated the services of an employee appointed on temporary basis, the administration would not fall within the definition of "industry", as contained in Section 2(j) of the Industrial Disputes Act. Without going into these questions, it was held that in such cases, the industrial Court, exercising its discretionary jurisdiction u/s 11-A of the Industrial Disputes Act, did not commit any error. Each case is required to be dealt with in the facts and circumstances obtaining therein. The Supreme Court found that the compensation of Rs. 75,000/- would be sufficient.

6. Sri Shyam Narain, learned Counsel for the respondents, on the other hand, relied upon the judgment in R.M. Yellatti Vs. The Assistant Executive Engineer, National Thermal Power Corpn. Vs. Jawahar Lal and Another, Krishi Utpadan Mandi Samiti, Agra v. Vimal Kumar Sharma, Special Leave to Appeal (Civil) No. 4752 of 2004. In these case 7 the Supreme Court upheld the reinstatement of workmen without any back wages in case of the employees of National Thermal Power Corporation and the Irrigation Department as well as U.P. Krishi Utpadan Mandi Samiti in the State of U.P.

7. In the present case the petitioners were not appointed after following any procedure for appointment in the statutory rules. They were engaged in the

exigency of work as daily wagers. Their appointment de hors the rules, as daily wagers would not entitle them the protection of U.P. Industrial disputes Act, 1947. The fact that they had worked for more than 240 days would not entitle them to the benefit of notice pay or retrenchment compensation. Such benefits are not to be made available to the daily wagers appointed de hors the service rules. At best they would be entitled to damage.

8. In the case at hand, the respondent workmen did not plead that they were appointed on a vacant sanctioned posts after following any procedure. The daily waged appointments were not advertised and that there was no scheme to regularise these workers. The petitioner has stated in paragraph 17 that there was no sanctioned posts or funds to retain these employees for regularization. There is no vacancy available with the petitioner. In such cases, even if the workmen had completed 240 days in a year, and that the provisions of Section 6-N of the Industrial Disputes Act, 1947 were not followed, the Tribunal could not have directed reinstatement of the respondent-workmen. There was no valid and sufficient explanation of delay of approaching Conciliation Officer after nine years of dispensation of their services. In the circumstances, the Labour Court, at best, could have awarded compensation to the workmen, following the judgment of the Supreme Court in Uttaranchal Forest Development Corporation (supra) and Mahboob Deepak (supra), all the writ petitions are allowed. The awards given by the Labour Court in all these writ petitions dated 13.2.2007 published on 9.7.2007 are set aside with a direction that all those respondents who had completed one year on daily waged employment shall be entitled compensation of Rs. 50,000/ (Rupees fifty thousand), those who had completed three years will be paid Rs. 75,000/- (Rupees Seventy five thousand) and those who had completed more than three years as daily wagers shall be paid Rs. 1,00,000/- (Rupees one lac) way of compensation. Such payment shall be made within eight weeks failing which they will be entitled to claim interest: @ 9% per annum.