
(1993) 10 AHC CK 0065

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32980 of 1993

Alok Sinha and Others

APPELLANT

Vs

Ghaziabad Development Authority and Others

RESPONDENT

Date of Decision : 12-10-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (1994) 1 AWC 11 : (1993) 3 UPLBEC 1917

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : H.S. Nigam, for the Appellant;

Final Decision : Disposed Of

Judgement

R.R.K. Trivedi, J.—In both the aforesaid writ petitions counter and rejoinder affidavits have been exchanged and learned counsel for the parties are agreed that both the petitions may be disposed of finalis?t this stage, Sri Anil Kumar Tyagi, Petitioner in second writ petition is also Petitioner no. 40 in first petition. The common questions of law and facts are involved in both the writ petitions and they may be decided conveniently by a common judgment. Civil Misc. Writ Petition No. 32980 of 1993 will be the leading case.

2. 40 Petitioners in Civil Misc. Writ Petition No. 32980 of 1993 are employed with Respondent no. 1 Ghaziabad Development Authority as clerks, Pump operators, Peons etc. A chart giving date of employment and the posts on which Petitioners are working has been filed as Annexure; 1 to the writ petition and perusal of the aforesaid chart shows that out of 40 Petitioners 13 are working on their posts since 1990, 26 are working since 1991 and one is working since 1992. Petitioners are aggrieved by order of the Vice-Chairman of Respondent no. 1 dated 13th August, 1993 which is being reproduced below for better appreciation:

Dinank 29-12-89 ke bad ke samast W.C./D.W. Intard basic karma-charion ko

hatakar 16-8-93 ko avagat karaen.

D.K. Mittal Vice Chairman G.D.A. 13-8-93

3. Learned counsel for the Petitioners has submitted that all the Petitioners have put in more than 240 days service with the Respondent no. 1 and they have acquired certain rights under law and they cannot be legally terminated by a general order of the nature passed by the Vice-Chairman, It has also been submitted -that the Petitioners were appointed against sanctioned posts which has not been denied in the counter affidavit. It has also been submitted that six persons who were employed after Petitioners and are juniors to them have been regularised. The names of the persons have been disclosed in paragraph no. 21 of the second writ petition. Learned counsel for the Petitioners has submitted that after working for such a long time with the Respondents, Petitioners are entitled to be regularised on their posts and the Petitioners are entitled for a direction from this Court against Respondent no. 1, to regularise on their posts. Reliance has been placed on the judgment in case of Sri Ram Kishan v. Union of India, (1991) 2 UP LB EC 1149.

4. The claim of the Petitioners has been resisted by Respondents by filing counter affidavit on various grounds. Learned counsel for the Respondents has submitted that the Petitioners are simply casual labourers and they were employed against the particular project and since the work on the project is over their services are being dispensed with and there is no violation of any provisions of law. Learned counsel has placed reliance in case of L. Robert D' Souza v. The Executive Engineer, Southern Railway AIR 1982 SC 854. Learned counsel for the Respondents has extensively referred to and relied on the Government Order dated 16th October, 1990 filed as Annexure C.A.-1 to the counter affidavit and Government Order dated 23 September, 1991 and on the basis of the aforesaid orders it has been submitted that the government direction is not to incur more than 1% of the total costs of the project in employing the Work charge staff and not to make further employment on the basis of Daily wages, contract posts and muster roll or fixed salaries. Learned counsel has submitted that in view of these directions, the Respondent no. 1 has no option but to dispense with the service of the Petitioner and they have DO right to continue on the posts.

5. I have seriously considered the submissions made by the learned counsel for the parties. There cannot be any dispute that Respondent no.-1 has a right to dispense with services of those employees whose services are not required in any of the project." and also in order to effect its economy but this right is not absolute and cannot be exercised in the manner it has been done by Respondent no. 1 by passing the impugned order. This is rule of law in the country and every employee who is serving with Respondent no. 1 for the last two three years is entitled to receive a specific order terminating him from service in accordance with law. In my opinion, this is the minimum requirement from the employer under Article 14 of the Constitution of India which guarantees fairness and reasonableness both at the time of recruitment as well as at the time of

retrenchment of the employees. The Respondent no. 1 being a statutory authority and State within the meaning of Article 12 of the Constitution, is expected to behave like a model employer and the services of all the Work Charge employees, Daily wager, muster roll etc. could not be, dispensed with in block by a general order in the nature of the impugned order. In my opinion, the impugned order cannot stand the test of Article 14 and 16 of the Constitution of India.

6. Another aspect of the matter is that as project undertaken by Respondent no. 1 are of commercial nature and alongwith its activities of development and improvement of urban area, it extensively carries out commercial activities and for that purpose it is also industrial establishment. u/s 6-N of the U.P. Industrial Disputes Act, 1947r here-in-after referred to as "Act", there are certain conditions which are to be complied with before a person could be retrenched from the employment irrespective of its nature, the only condition to be specified is that he should have been in continuous service for not less than one year under an employment, then he becomes entitled for one month's notice in writing indicating the reasons for retrenchment and in absence of notice he is entitled for the wages for the period of notice The workman is also entitled under the aforesaid provisions for a compensation as contemplated under Cause (b). in my opinion, all the Petitioners have worked for more than a year with the Respondent no. 1, they cannot be dispensed with without complying with the provisions of Section 6-N of the Act.

7. Learned counsel for the Respondents however, tried to submit that the Petitioners were employed against the particular project and as the project has been completed they are being dispensed, with. Reliance has been placed in case of L. Robert D" Souza (supra). I have considered this submission and in my opinion, the case relied on by the learned counsel cannot be any help as the case before the Hon"ble Supreme Court was with regard to the workers of the railway establishment, whose employment conditions were governed under the statutory rules. However in the present case, no such rule has been referred to by the learned counsel for the Respondents. Respondents have also failed to furnish any detail showing that which Petitioner was employed under which project and when the project was completed. In absence of the aforesaid facts the submission of the learned counsel cannot, be accepted.

8. Learned counsel for the Petitioners also submitted that six persons who were employed after Petitioners have been regularised and Petitioners are also entitled for being regularised. Learned counsel for the Respondents has submitted that the persons who have been regularised they were from the other source and they have been regularised under the specific orders of the government and they constitute a different class. In my opinion so far as the matter of regularisation is concerned in view of the latest judgment of the Hon"ble Supreme Court in State of Haryana and others Vs. Piara Singh and others etc. etc., , the direction regarding regularisation. cannot be issued unless there is some rule of orders

under which Petitioners are entitled to be regularised, The. guidelines in this regard have been laid down in the aforesaid case. However, if any order is given by the" State Government for regularising the services, the benefit may be extended to the Petitioners. It may be noticed that Hon"ble Supreme Court in case of Sri Ram Kishan and others while dealing with the case "of Assistant Engineers and Junior Engineers -disposed of the case with certain directions. Respondents are well aware of this judgment. In my opinion, they should have shown respect for law and ought to have avoided passing of the general order like the present one. In my opinion, this writ petition may be disposed of finally with the following directions:

(1) The services of the Petitioners and identically situated other employees serving with the Respondent no. I shall not be dispensed with under the impugned order.

(2) It shall be open to Respondents to dispense with services of such employees/ workers by specific orders passed in respect of, each of the employee after considering his case individually and in accordance with law.

(3) The provisions of Section 6-N of the Act shall be complied with, in respect of" the employee Who are entitled for this benefit.

(4) List of each categories of the workers shall be separately prepared by Respondents and while passing orders of retrenchment the policy of last come first go should be invariably followed.

(5) In case any order or rule comes in existence during this period under which services of such workers may be regularised, the benefit may be extended to the Petitioners also.

It is expected that the Respondents shall strictly follow the aforesaid directions while dispensing with the services of such workers and thus lot of unnecessary litigation may be avoided. There will be no order as to costs.

9. It is noteworthy that Petitioner Anil Kumar Tyagi is also Petitioner no. 40 in the first writ petition and as relief has been granted in the first writ petition, no separate orders are required in the petition filed by him as Civil Misc. Writ Petition No. 32981 of. 1993. Subject to aforesaid, it shall also stand disposed of finally. There will be no order as to costs.