
(2002) 10 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 3130 of 1993

AMCO Batteries Ltd.

APPELLANT

Vs

Labour Court No. 3 and Others

RESPONDENT

Date of Decision : 24-10-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(OO)(BB)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2003) 1 AWC 204 : (2003) 96 FLR 142

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Bhasin and Bhasin and Bharti Sapru, for the Appellant; Sanjay Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The petitioner-employer aggrieved by the award of the labour court (3), U. P., Kanpur, dated 9.6.1992 passed in Adjudication Case No. 97 of 1988 filed this writ petition challenging the same under Articles 226 and 227 of the Constitution of India.

2. The following dispute was referred to by the State Government in exercise of power u/s 4K of the U. P. Industrial Disputes Act, 1947, vide its order dated 2.8.1988 before the labour court for adjudication.

^^D;k Isok;kstdksa }kjk vius Jfed vkj- ds- JhokLro iq= Jh dSyk"k ukFk JhokLro in Vadd fyfid dks fnukad 19-9-1987 ls Isok ls i`Fkd@oafpr fd;k tkuk mfpr rFkk@vFkok oS/kkfud gS] ;fn ugha rks lacaf/kr Jfed D;k ykHk@vuqrks"k ?fjyhQ? ikus dk vf/kdkjh gS rFkk vU; fdl fooj.k lfgr **

3. The labour court after receipt of the reference registered the case and issued notices to the respective parties. Parties have exchanged their pleadings and adduced oral and documentary evidence. The case set up by the petitioner-employer before the labour court was that the workman was appointed pursuant

to an advertisement, which requires the person who is first class graduate, on probation and the workman was issued a letter of appointment for being appointed on probation period of six months, though the petitioner was not first class graduate and was appointed on a consolidated salary of Rs. 750 per month. His services, therefore, came automatically to an end after expiry of six months from the date of appointment, i.e., 31.7.1985. However, the employer further contended that thereafter the workman was not employed by the petitioner and was in fact employed by S. K. Sharma, the Sales Manager of the employer on his own and the employer have no concern that the workman's services have been terminated on 19.8.1987. The labour court after considering the material evidence on record have arrived at the conclusion that In fact the workman concerned has worked w.e.f. 1.8.1985, even beyond six months of the probation till 19.8.1987, therefore, he has worked for more than 240 days in the twelve calendar months and the employer have terminated his services without complying with the provision of Section 6N of the U. P, Industrial Disputes Act, 1947, (hereinafter referred to as the "Act"}, therefore, termination of his services are illegal and unjustified and directed for reinstatement of the workman concerned with continuity of service with full back wages.

4. Ms. Bharti Sapru, learned counsel appearing on behalf of the petitioner-employer relying upon a decision has submitted that mere appointment on probation for a fixed period of six months does not confer any right to continue to the workman beyond six months and it cannot be treated as appointment, as the appointment has automatically come to an end immediately after expiry of the period of six months and therefore, it shall be deemed as cessation clause u/ s 2(OO)(BB) of Industrial Disputes Act, 1947 (Central). Ms. Sapru further submitted that since the workman does not fulfil the qualification, the question of his being confirmed does not arise and the continuance beyond the period of six months was under the capacity of private service of Sri S. K. Sharma, the local manager of the employer with which they have no concern. Ms. Sapru has relied upon decisions in 2001 (7) SCC 164 : JT 1992 (6) FJR 82 561.

5. Sri Sanjay Mishra, learned counsel appearing on behalf of the workman concerned has relied upon a decision of learned single Judge in 2000 (1) UPLBEC 669, wherein learned single Judge considering the various decisions of the Supreme Court came to the conclusion that non-compliance of the provision of Section 6N of the U. P. Industrial Disputes Act, 1947, vitiates the termination illegal and arbitrary, if the workman concerned has completed 240 days of working in the preceding calendar year. Sri Mishra further relied upon two decisions of this Court in U.P. State Electricity Board Vs. Presiding Officer, Labour Court, U.P., Kanpur and Others, : Rajya Krishi Utpadan Mandi Parishad and Another Vs. Prescribed Authority, Industrial Tribunal (V), U.P., Meerut and Another, for the same purposes.

6. The case relied upon by Ms, Sapru deals with the situation that there is no automatic confirmation and has gone to the extent that confirmation is a positive

action for which a positive order is required, therefore, the workman concerned cannot be said to have worked after the expiry of the period of six months. A perusal of the appointment letter Issued to the workman concerned demonstrates that there is no stipulation that his services automatically come to an end immediately after expiry of the aforesaid period of six months. This is the admitted fact and a finding has also been recorded by the labour court that the workman was allowed to continue beyond six months and the workman in fact has completed 240 days of working in the preceding calendar year. In this view of the matter, the controversy seems to be, as declared by the labour court, as to whether the termination of the services of the workman concerned by the employer without complying with the provision of Section 6N of the Act is valid and justified or not and to what relief the workman concerned is entitled? The labour court having come to the conclusion, as stated above, recorded a finding that the concerned workman has worked for more than 240 days in the preceding calendar year and that the termination of services of the workman concerned is illegal and unjustified.

7. In this view of the matter, the labour court, in my opinion, has not committed any error, much less an error apparent on the face of record, which may warrant interference under Article 226 of the Constitution of India.

8. On the question as to whether his termination will be covered by the definition of retrenchment, it is admitted case of the parties that since the provisions of Section 6N of the Act have not been complied with, the same is not covered by the Explanation clause of definition of retrenchment under the Central Act. It was obligatory on the part of the employer to have complied with the provision of Section 6N of the Act and the termination of the workman, therefore, amounts to retrenchment. In this view of the matter, the labour court, in my opinion, has correctly come to the conclusion that the workman is entitled for reinstatement with continuity of service and full back wages. Lastly, it is submitted by Ms. Sapru that the award of full back wages in the facts and circumstances of the case, is not Justified. In my opinion and also in the interest of justice, the award of the labour court deserves to be modified and is hereby modified to the extent that the workman concerned shall be entitled to get half wages from the date of termination up to the date of reference and thereafter full back wages. The award of the labour court is modified to the aforesaid extent.

9. In view of what has been stated above, this writ petition is dismissed except the modification, referred to above. The interim order, if any, stands vacated. However, there shall be no order as to costs.