

(2004) 01 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition (Lodging) No. 449 of 2003

Ami Chand

APPELLANT

Vs

Uttaranchal Forest Development Corporation and Others

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N

Citation : (2004) 101 FLR 622 : (2004) 3 LLJ 60

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Suman Sirohi, for the Appellant; P.S. Danu, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—By means of this writ petition the petitioners have prayed for the issue of a writ or order in the nature of mandamus commanding the respondents to reinstate petitioners with continuity of service with back wages in pursuance of the judgments and order dated August 21, 2003 and September 24, 2003. Further prayer was made for the issue of a writ in the nature of mandamus commanding the respondents to grant the same benefits to the petitioners, as other similarly situated employees who were party in Writ Petition No. 1376 of 2001, Writ Petition No. 511 (S/S) of 2003, 6747 (S/S) of 2001 and 1539 (S/S) of 2003, have been given under the judgment and order dated August 21, 2003 and September 24, 2003 passed by this Court.

2. Brief facts giving rise to the writ petition are that the petitioners No. 1 to 10, 13 and 14 were working as Scalar under the respondents since 1981-82 and petitioner Nos. 11 and 12 were working as Chaukidar. According to the petitioners, their services were wrongly terminated w.e.f. March 31, 1995, April 1, 1995 and May 31, 1995.

3. Heard Ms. Suman Sirohi, learned counsel for the petitioner and Sri. P.S. Danu, learned counsel for the respondents.

4. The petitioners have stated that at the time of their termination all the petitioners were working at Kotdwar and Pauri Garhwal. According to the case of the petitioners 18 other employees of the respondents Nigam were also retrenched on the same day by respondent No. 2 who had also raised an industrial dispute and award was given in favour of the workmen and relief was granted by the Labour Court for reinstatement with continuity of service and 50% back wages. It has been further stated that the respondent had filed 19 writ petitions against the award dated August 10, 2001 and the writ petitions were dismissed on April 24, 2003 upholding the validity of the award. The petitioners have further stated that on: December 26, 1997 the award was challenged in Writ Petition No. 1376 of 2001 and the award was set-aside on August 21, 2003 on the ground that the termination of the aforesaid 30 workmen were made in contravention of the mandatory provisions of Section 25N of the Industrial Disputes Act.

5. According to the contention of the petitioners since more than 100 employees are working in the industrial establishment, as such, three months prior notice or pay in lieu thereof is mandatory, therefore, the orders of retrenchment are wholly illegal.

6. The petitioner has submitted that Rules: were enforced w.e.f, March 10, 1976 by which the provisions of Chapter V-B was made applicable in the State of U.P. Rule-4 is quoted as under:

"Rule--4 Notice of and application for permission for retrenchment:

(1) Notice under Clause (c) of sub-section (1) of Section 25N for retrenchment shall be served in Form "D" on such authority as may be specified by the State Government either personally or by registered post acknowledgment due and where the notice is served by registered post, the date on which the same was delivered to such authority shall be made deemed to be the date of service of the notice for the purpose of Sub-section (3) of the said section.

(2) Application for permission for retrenchment under Sub-section (4) of Section 25N shall be made in Form "E" with attested copy of the notice given by the employer under Clause (a) of Section 25F and delivered to such authority as may be specified by the State Government either personally or by registered post acknowledgment due and where application is sent by registered post the date on which the same was delivered to the State Government or the authority shall be deemed to be the date on which the application was made for the purpose of Sub-section (5) of the said section.

(3) The notice or, as the case may be, the application shall be served in triplicate and sufficient number of copies of the application for service on the workmen concerned shall be submitted alongwith notice or as the case may be, the application.

(4) The employer concerned shall furnish to the State Government or the

authority to whom the notice for retrenchment has been given under Clause (c) of Sub-section (1) or, as the case may be, Sub-section (4) of the said Section 25N such further information as the State Government or, as the case may be, the authority, considers necessary for arriving at a decision considers necessary for arriving at a decision on the notice or, as the case may be, application, as and when called for by such authority, so as to enable the State Government or the authority to communicate its permission or refusal to grant permission within the period specified in Sub-section (3), or, as the case may be Sub-section (5) of the said Section 25N."

7. The Second contention of the petitioners that the Forest Corporation is a "factory" as defined under Clause (m) of Section 2 of the Factories Act where the manufacturing process is carried on by engaging the workmen for cutting the trees by axe and changing the shape of the timber into logs by using hand driven saw. In process a large number of workmen (more than 100 workmen) are working in the Corporation. Therefore, the Corporation, being an establishment, is within the definition of industrial establishment u/s 25L, contained in Chapter V-B. Hence, the provision of Section 25N will be applicable and without complying the procedure prescribed for retrenchment u/s 25N the order will be in nullity. The Labour Court, after considering the rival contentions has recorded the findings that the Forest Corporation cannot be said to be a "factory" under the Factories Act.

8. Learned counsel for the petitioners has placed reliance on the amending Act, where a new Chapter V-B of the Industrial Disputes Act has been added. Effect of this amendment is that the industrial establishment has been classified into two categories. In one category Chapter V-A will apply and in another category Chapter V-B will apply. Chapter V-B of the Industrial Disputes Act contains Sections 25K to 25S.

9. By the same amending Act No. 32 of 1976 "industrial establishment" was defined u/s 2(ka) in Chapter V-B which reads as under:

"(ka) "Industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then-(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking."

10. Ms. Suman Sirohi, learned counsel for the petitioners has referred the provisions of Sections 25K, 25L, and 25N which read as under:

"Section 25K

(1) The provisions of the chapter shall apply to an industrial establishment (not

being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than (one hundred) workmen were employed on an average per working day for the preceding twelve months. :

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final."

"Section 15L

(a) "Industrial establishment" means-

(i) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); and

(iii) a plantation as defined in Clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in Sub-clause (ii) of Clause (a) of Section 2

(i) in relation to any company in which not less than fifty-one percent of the paid up share capital is held by the Central Government, or

(ii) in relation to any corporation (not being a corporation referred to Sub-clause (i) of Clause (a) of Section 2) established by or under any law made by Parliament, the Central Government shall be appropriate Government."

"Section 25N:

No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer, until-

(a) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, and

(b) the prior permission of appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this Section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under Sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under Sub-section (1) has been made,

the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under Sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of Sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such establishment of such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under Sub-section (3) or where permission for retrenchment is deemed to be granted under Sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled

to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days" average pay for every completed year of continuous service or any part thereof in excess of six months."

11. Similar controversy came up before this Court in Writ Petition No. 6747 (S/S) 2001 in which His Lordship Hon"ble Justice Mr. P.C. VERMA has quashed the retrenchment order. The operative portion of the order is quoted below:

"..... Learned counsel for the petitioners submitted that the retrenchment orders dated March 24, 1995 have been passed in violation of Clause-C of Section 6-N, 6-P of the U.P. Industrial Disputes Act and u/s 25N of the Industrial Disputes Act, as the Forest Corporation is an Industrial Establishment under Chapter V-B of the Industrial Disputes Act as held by this Court vide order dated August 21, 2003 passed in Writ Petition No. 1376 M/S of 2001, Zabar Singh and others v. P.O. Labour Court and others. This Court in its judgment passed in Writ Petition No. 1376 M/S of 2001, has held that the U.P. Forest Corporation is an Industrial Establishment, therefore, while effecting retrenchment, the provision of Section 25N of the Industrial Disputes Act will have to be followed. Admittedly, in the present case, the provisions of Section 25N of the Industrial Disputes Act have, not been followed. Therefore, the retrenchment order is void-ab-initio and workmen are entitled for reinstatement with continuity of service. However, they shall not be paid any back wages. Accordingly, writ of certiorari is issued. Orders of retrenchment in regard to the petitioners dated March 24, 1995 are quashed. No order as to costs."

12. The present writ petition is squarely covered by the order passed in Writ Petition No. 6747 (S/S) of 2001.

13. Accordingly, writ petition is allowed. A writ of mandamus is issued. The respondents are directed to reinstate the petitioners with continuity of service. However, they shall not be paid any back wages.

14. With the aforesaid observations, the writ petition is disposed of.