
(2004) 04 AHC CK 0231
In the Allahabad High Court
Case No : C.M.W.P. No. 8177 of 1988

Arun Kumar Tripathi

APPELLANT

Vs

Labour Court, Gorakhpur and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 25B(2), 25F, 25F(1), 4K

Citation : (2004) 5 AWC 4894

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Shyam Narain and R.K. Khare, for the Appellant; H.S. Nigam and S.S. Nigam, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri. Shyam Narain on behalf of the Petitioner, Sri. R.D. Khare on behalf of the Respondent No. 2 and standing counsel on behalf of Respondent Nos. 1 and 3.

2. This writ petition is directed against the award of the Labour Court dated 19th October, 1987, passed in Adjudication Case No. 95 of 1986.

3. Petitioner Arun Kumar was appointed as clerk in the employment of U.P. State Sugar Corporation Limited, Laxmiganj, which is now a unit of the U.P. State Sugar and Cane Development Corporation. The appointment of the Petitioner was time-bound and was extended from time to time. The last appointment offered to the Petitioner came to an end, as per the conditions of appointment, on 28th February, 1985, and w.e.f. 1st Mach, 1985 the Petitioner was refused work.

4. Feeling aggrieved by the aforesaid action of the employers, workman raised an industrial dispute. The State Government, in exercise of powers u/s 4K of the U.P. Industrial Disputes Act, referred the dispute for adjudication to the Labour Court, Gorakhpur. The dispute was registered as Adjudication Case No. 95 of

1986. The Labour Court by means of the award dated 19th October, 1987, has answered the reference in favour of the employers and against the workman. Hence present writ petition.

5. The Labour Court in its award dated 19th October, 1987, has recorded a finding that the Petitioner was offered appointment as an Apprentice. The appointment of the Petitioner was time-bound and on each occasion this period was extended on the application filed by the workman himself. The Labour Court in these circumstances held that the Petitioner, being an Apprentice, does not answer the description of workman and consequently the provisions of Section 6N of the U.P. Industrial Disputes Act were not attracted.

6. On behalf of the Petitioner it is contended that the finding recorded by the Labour Court runs contrary to the law laid down by the Hon''ble Supreme Court in the judgment in *The State Bank of India Vs. Shri N. Sundara Money*,

7. The Hon''ble Supreme Court in the said judgment has clarified that the workman, who has completed 240 days of continuous service, is entitled for protection u/s 6N(b) even in the cases where the appointments were time-bound.

8. It is further contended that under proviso to Section 6N(a) in respect of time-bound appointments the only exception carved out is that the workman is not entitled to notice or pay in lieu of notice period as provided u/s 6N(a). According to the Petitioner even where no notices were required to be given to Petitioner u/s 6N(a), it is mandatory that the employer must pay retrenchment compensation as a condition precedent before effecting retrenchment in view of the Section 6N(b).

9. The contention raised on behalf of the Petitioner has force and is also established from the law laid down by the Hon''ble Supreme Court in the judgment referred to above. The Hon''ble Supreme Court, in the aforesaid judgment, has held as follows:

The leading case on this fact of law is the *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, Gajendragadkar, J. (as he then was) observed:

Section 25F(b) provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Clauses (a) and (e) of the said section prescribe similar conditions but we are not concerned with them. On a plain reading of Section 25F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent non-

compliance with the said condition would not render the impugned retrenchment invalid... Failure to comply with the said provision renders the impugned orders invalid and inoperative.

Without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25F, he cannot be retrenched without payment, at the time of retrenchment compensation computed as prescribed therein read with Section 25B(2). But argues the Appellant, all these obligations flow only out of retrenchment, not termination outside that species of snapping employment. What, then, is retrenchment? The key to this vexed question is to be found in Section 2(oo) which reads thus:

2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

- (a) voluntary retirement of the workman ; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
- (c) termination of the service of a workman on the ground of continued ill-health ;

For any reason whatsoever very wide and almost admitting of no exception. Still, the employer urges that when the order of appointment carries an automatic cessation of service, the period of employment works itself out by efflux of time, not by act of employer. Such cases are out-side the concept of "retrenchment" and cannot entail the burdensome conditions of Section 25F. Of course, that a nine days, employment hedged in which an express condition of temporaries and automatic cessation, may look like being in a different street (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation, Section 2(oo) is the master of the situation and the Court cannot truncate its amplitude.

A break down of Section 2(oo) unmistakably expands the semantics of retrenchment. Termination... for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is-has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination however produced. May be, the present

may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means "to end, conclude, cease". In the present case, the employment ceased, concluded, ended on the expiration of nine days-automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1) (sic) (Section 25F(a)?). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient.

10. In view of the aforesaid, the finding recorded by the Labour Court cannot be legally sustained and even if it is accepted that the appointment of the workman was time-bound, the provisions of Section 6N(b) were still required to be complied with by the employers before terminating the services of the workman, as the workman had completed 240 days of continuous service in the previous calendar year.

11. On behalf of the employers it is contended that since the appointment of the Petitioner was by way of apprentice only, the workman at best can be restored back to the post of apprentice only. It is further stated that the unit, in which the Petitioner was working, is likely to be closed in view of the fact that the Corporation itself has been declared to be a sick industry under the orders of the Board of Industrial and Financial Reconstruction. It is further stated that in view of the same the Respondent have stopped the practice of appointment on Apprentice and, therefore, in no case the workman should be appointed on better footing than he was working at the time when the services of the workman were terminated. Therefore, the relief to which the workman is entitled should not be the relief of reinstatement. The relief to be granted may be moulded having regard to the facts and circumstances of the case.

12. Having regard to the facts and circumstances of the case, it is for the Labour Court to decide as to what relief the workman is entitled in the present facts and circumstances of the case. The award which is under challenge in the writ petition cannot be sustained in view of the fact that the Labour Court has failed to appreciate the scope of the provisions of Section 6N as interpreted by the Hon"ble Supreme Court in the judgment referred to above.

13. In the circumstances stated above, the award of the Labour Court dated 19th October, 1987, passed in Adjudication Case No. 95 of 1986 is hereby set aside.

14. The matter is remanded to the Labour Court for deciding afresh including the relief in the facts and circumstances of the case, the workman is entitled, after affording opportunity of hearing to the parties concerned.

15. The aforesaid exercise shall be undertaken by the Labour Court at the

earliest possible, preferably within a period of three months from the date a certified copy of this order is produced before it.

16. In view of the above, the writ petition is allowed. No order as to cost.