

(1991) 12 AHC CK 0052

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24607 of 1988

Arvind Kumar Agnihotri

APPELLANT

Vs

U.P. State Handloom Corporation Ltd. and Others

RESPONDENT

Date of Decision : 07-12-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 25F, 4K

Citation : (1991) 2 AWC 409

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : P.K. Singh, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Mehrotra, J.—The Petitioner was appointed as a Production Clerk in the service of the U.P. Handloom Corporation Ltd. by an order, dated 31-8-1982. The appointment letter issued to the Petitioner reads as under;

With reference to his application, dated 31-8-82, Shri Arvind Kumar Agnihotri is hereby appointed as production clerk @ daily rate of Rs. 12/- per day under U.P. State Handloom Corporation Ltd. on the following terms:

1. He will be treated as U.P. State Handloom Corporation Servant. His services are temporary and are liable to be terminated at any time without any reason and notice.
2. He will not be entitled for any casual leave or any other leave.
3. Sunday and Government of U.P. holidays will be treated as paid days. Any working days when he is absent, amount will be deducted from his month salary.

....

2. In pursuance of the aforesaid appointment letter, the Petitioner joined his

services on 1-9-1982 as production clerk at Production Centre of the U.P. State Handloom Corporation Head Quarter, Unchahar, district Rai Bareli and continued to serve without any break for almost two years with all sincerity and hard work. It is contended that there was no complaint throughout the Petitioner's service. All of a sudden, vide an order, dated 9-7-1984, the services of the Petitioner along with nine others were terminated by the Respondents. The Petitioner thereafter raised an industrial dispute contending therein that the Petitioner's services have been illegally terminated. The State Government in exercise of its powers u/s 4-K of the U.P. Industrial Disputes Act made a reference to the Industrial Tribunal U.P. Lucknow in the following terms:

Whether the employers were justified in terminating the services of their workman Arvind Kumar Agnihotri, production clerk, son of Sri Vishwas Deo Agnihotri, on 9th July, 1984 and whether such termination is legal? If not, to what relief the concerned workman is entitled to get and what directions are necessary in this respect.

The aforesaid reference was registered as Adjudication Case No. 58 of 1986 before the Industrial Tribunal II, U.P. Lucknow. The Presiding Officer of the Industrial Tribunal U.P. Lucknow, vide his award, dated 23-7-1983 held that the services of the Petitioner were illegally terminated but refused to grant relief of reinstatement with back wages to the Petitioner on the ground that since the Petitioner's services were terminated on the basis of a policy decision Petitioner should be awarded lump sum compensation of Rs. 20, 000/- instead of being reinstated with back wages. The Petitioner Sri Arvind Kumar Agnihotri has Challenged the aforesaid award to the extent the Presiding Officer of the Industrial Tribunal has refused to grant the relief of reinstatement and back wages to the Petitioner in the present writ petition under Article 226 of the Constitution of India.

3. The Presiding Officer of the Industrial Tribunal decided two adjudication cases by the impugned order, one of the Petitioner Sri Arvind Kumar Agnihotri and the other of one Sri Hira Lal Pandey who was also employed with U.P. State Handloom Corporation Ltd. In similar manner as the Petitioner and whose services were also terminated along with the Petitioner. The State Government also referred the dispute raised by Hira Lal Pandey in the same terms in which the Petitioner's dispute is referred. However, in the present writ petition, I am not concerned with findings recorded in respect of Hira Lal Pandey as the award has been challenged only by Arvind Kumar Agnihotri.

4. The Presiding Officer of the Industrial Tribunal recorded a categorical finding that it is admitted in both the cases that each of the workmen has worked for more than 240 days before the date of termination of his employment and held that even a daily wager who completes 240 days in service in a calendar year proceeding the date of termination is intention of the employer that the services of the Petitioner were legally terminated has been repelled. In the award, the Industrial Tribunal also recorded a finding "the story put forth by the employers

in the course of oral evidence that the workmen were offered one month's pay in lieu of notice under law both the workmen refused to take it and took away their termination order without acknowledging receipt is not believable. The orders make no mention of notice, pay or compensation. The witness admitted that no attempt was made to send the money by post because they did not have their address. This again is an untenable plea because every employer is required to make every employee including a daily wage to fill employment form in which he will give his address.. Therefore, the report purported to have been sent vide Ext. B-3 to the effect that the workmen's services were terminated on 9-7-84 but they did not accept any compensation amount is not only an afterthought but raises a serious suspicion of being cooked up evidence. Moreover, the evidence on this point is strictly inadmissible because there is no pleading by the employers that any compensation was offered to the workmen which they refused. The only pleading of the employers is that they were justified in terminating their services as there was nothing illegal.

5. After the aforesaid observations, the Industrial Tribunal further held that the employer which is a public sector undertaking should not have behaved in a most irresponsible manner by non-observing the provisions of law and terminating the services of workmen who have worked for two years without giving them pay in lieu of notice and retrenchment compensation. After recording all the findings in favour of the workmen, in the concluding part of its order, the Industrial Tribunal held that normally the workmen in each of the two cases, would be entitled to reinstatement with full back wages and then held that, however, in view of the fact that there is a policy direction given by the Head Office that all daily wage workers should be removed, ends of justice would be served if each workman is paid a lump sum compensation of Rs. 20,000/- inclusive of cost.

6. The Petitioner's counsel has submitted that on the basis of the findings recorded by the Industrial Tribunal, the Petitioner was entitled to reinstatement with full back wages and there was absolutely no justification for the Industrial Tribunal to have denied the said relief to the Petitioner and instead thereof granting a meagre relief of compensation of Rs. 20,000/- only. In support of his submission, the Petitioner's counsel had relied upon the following decisions:

(1) Mohan Lal Vs. Management of Bharat Electronics Ltd., , wherein the Hon'ble Supreme Court held:

Undoubtedly therefore the termination would constitute retrenchment and by a catena of decisions it is well settled that where prerequisite for valid retrenchment as laid down in Section 25-F has not been complied with, retrenchment bringing about termination of service is ab initio void In The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, this Court held that failure to comply with the requirement of Section 25-F which prescribes a condition precedent for a valid retrenchment renders the order of retrenchment invalid and inoperative. In other words, it does not bring about a cessation of service of the workman and the workman continues to be in service. This was

not even seriously controverted before us.

The Hon''ble Supreme Court further held--

But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits.

(2) Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, . The Hon''ble Supreme Court held:

If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule.

7. The learned Chief Standing Counsel Sri A.P. Singh appearing for the U.P. State Handloom Corporation has contended that the Petitioner's appointment itself was ab initio void and illegal and as such the Petitioner was not entitled to any relief whatsoever and in view of the fact that in U.P. State Handloom Corporation Ltd., the power to issue appointment orders vests only in the Managing Director and the General Manager, no other authority whatsoever can issue the appointment orders. It was also contended that the appointment letter has been obtained by the Petitioner subsequently by one Sri R.K. Mishra, who was the then Deputy Protect Officer and whose services have been terminated after 1983. The submission of Sri Singh is that in view of the fact that initial appointment of the Petitioner was illegal, no interference is called for in the award, wherein a suitable compensation has been awarded to the Petitioner for the alleged illegal retrenchment. Sri Singh has also contended that the Industrial Tribunal, in the circumstances, have thought fit to grant the relief of lump sum compensation instead of reinstating the Petitioner in service. No interference is called in the matter in exercise of jurisdiction of this Court under Article 226 of the Constitution of India.

8. I am unable to agree with the submissions made by the learned Chief Standing Counsel. No such plea was ever raised before the Industrial Tribunal that the appointment of the Petitioner was ab initio illegal or without authority of law. On the other hand, the case of the U.P. State Handloom Corporation before the Industrial Tribunal was that the Petitioner was employed as a daily wager and his services were terminated at the instructions of the Head Office of the U.P. state Handloom corporation Ltd. It consented before the Industrial Tribunal that retrenchment compensation was offered to the Petitioner but the Petitioner refused to accept the same. In view of these pleadings, it is not open to the U.P. State Hand-loom Corporation now to contend before this Court that the

appointment of the Petitioner itself was void. The said statement made by the U.P. State Handloom Corporation in paragraph "3" of the counter affidavit has been vehemently denied by the Petitioner in the rejoinder affidavit where in it has been contended that the Petitioner's appointment was made by the authorised officer. It has been pointed out that besides the Managing Director and the General Manager of the Corporation, various Deputy Project Officers and Depot Managers are also competent to recruit daily wage workers after obtaining the necessary approval from the Corporation as per requirements of their respective project, retail outlets, show rooms and exhibition counters. It has been further pointed out in the rejoinder affidavit that after one year of the Petitioner's appointment, the Petitioner was sent by Sri A.N. Ansari, the project officer from Rai Bareli to Corporation Head Quarters at Kanpur and the General Manager of the Corporation, vide letter dated 30-11-1983 posted the Petitioner on the exhibition counter of Sadar Bazar, Agra. The necessary orders regarding Petitioner's posting have been annexed with the rejoinder affidavit. In view of these facts stated in the rejoinder affidavit, it is clear that the stand of the U.P. State Handloom that the Petitioner's appointment was without approval of the Head Quarter is baseless and contrary to record.

9. The only question which requires consideration in the present matter is that the Industrial Tribunal having itself held that the services of the Petitioner were illegally terminated without paying the retrenchment compensation which the Petitioner was held to be entitled, was the Industrial Tribunal justified in refusing the relief to the Petitioner of reinstatement with back wages? The only justification which the Industrial Tribunal has given for refusing the said relief is that since the Petitioner's services were terminated in view of a policy decision of the Head Office of the employer Corporation, therefore, the Petitioner should not be granted the relief of reinstatement and back wages. I am clearly of the opinion that the justification given by the Industrial Tribunal for not granting the relief of reinstatement with back wages is not due to any conduct or misconduct of the Petitioner. Petitioner's services have been illegally terminated for no fault of his. The Industrial Tribunal having itself held that the termination of Petitioner's services was illegal without paying the retrenchment compensation, there was absolutely no justification for the Industrial Tribunal to have denied the normal relief of reinstatement and back wages to the Petitioner. The Industrial Tribunal to the extent it refused to grant the relief of reinstatement and back wages to the Petitioner is patently illegal and is liable to be set aside.

10. I therefore, quash the order of the Industrial Tribunal II, U.P. Lucknow dated 23rd of July, 1988, filed as Annexure "8" to the writ petition to the extent it has refused the relief of re-instatement and back wages to the Petitioner and instead thereof has awarded a compensation of Rs. 20,000/- only and accordingly, I modify the award to the effect that the Petitioner will be reinstated in service by the U P. State Handloom Corporation Ltd., within a month of the receipt of a certified copy of this order and will be paid his entire back wages. The Petitioner will also be entitled for the costs of the writ petition. The writ petition is

accordingly allowed.