
(1986) 03 AHC CK 0030
In the Allahabad High Court
Case No : Writ Petition No. 3723 of 1983

Brij Kishore Shukla and Another

APPELLANT

Vs

State of U.P.& another

RESPONDENT

Date of Decision : 13-03-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(J), 25(F)

Citation : (1986) 03 AHC CK 0030

Hon'ble Judges : D.N.Jha, J and D.S.Bajpai, J

Final Decision : Allowed

Judgement

D.S. Bajpai, J.—This writ petition under Article 226 of the Constitution has been filed by Brij Kishore Shukla and Babadin Singh praying for issuance of a writ in the nature of mandamus commanding the opposite parties to allow the petitioners to continue in the post of barriermen/peon and not to terminate the services of the petitioner, as also for a writ of certiorari to quash the order of termination, if any, issued against them. A further prayer has been made for a direction commanding the opposite parties to regularise the services of the petitioners. 2. Since the parties have exchanged affidavits and the petition is ripe for hearing we, with the consent of the parties' counsel, proceeded to hear and dispose of the petition finally instead of passing a formal order of admission.

3. The material facts, as are relevant for decision of the writ petition, in short are that the petitioners were appointed watermen in the year 1979/80 on daily wages of Rs. 7 per day by the Krishi Utpadan Mandi Samiti, Sitapur Road Lucknow (hereinafter referred to as the Mandi Samiti) and were called upon to work as barriermen and peon. Thereafter they were duly selected by a selection committee on 29th March, 1982 for appointment to the post of barriermen (annexure 1). The petitioners further assert that ever since their appointment on 20th March, 1982 they have been working as barriermen/peon uninterruptedly for two years, one month and one day. The petitioners assert that in view of good and efficient work they were put in the scale of pay of 165 215 plus other

allowances admissible to their class of employees which are annexures 2 and 2A to the writ petition. Thereafter with effect from 24th November, 1982 the petitioners were placed in the revised pay scale of Rs. 215305. It is alleged that the opposite parties all of a sudden for no rhyme or reason asked the petitioners on 1st January, 1983 that their services were no longer required and the petitioners made several representations to the opposite parties but to no avail. Thereafter on 15th July, 1983 a list of 14 persons who had been selected for appointment to the post of barrierman was circulated by the opposite parties which did not include the names of the petitioner. The petitioners assert that they acquired the status of a temporary servant under Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), and they were entitled for regularisation of their services and their services could not be terminated. The petitioners also raised the plea of discrimination under Articles 14 and 16 of the Constitution and violation of Rule 77 of the Rules framed under the Act.

4. The opposite parties have filed a counter affidavit taking the plea that the petitioners were appointed on daily wages as Class IV employees as and when exigency required and were asked to look after the work of peon as well as barriermen that there was no post of barriermen in regular vacancy but in order to check evasion of market fee the Mandi Samiti fixed barriers and on those barriers seasonal appointments were made on daily wages. That the appointment were made on an adhoc basis on the post of barriermen. It is, however, admitted that the petitioners were appointed by a letter dated 20/8/1982 and it is further admitted that the petitioner no. 1 has worked for a total period of two years one month and the petitioner no. 2 has worked for two years 11 months and the opposite parties opposed the writ petition.

5. We have heard the learned counsel for the parties at some length and gone through the various affidavits filed by the parties. The sole question requiring consideration of this Court is whether the Mandi Samiti is an industry within the definition of Section 2(j) of the Act and in case it was an industry, could the services of the petitioners be terminated in face of the provisions contained in Section 25(F) of the Act. Section 2(j) of the Act defines industry as :

‘industry means any systematic activity carried on by cooperation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agent, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature),

The Supreme Court in its decision in Civil Appeals Nos. 753754 of 1975, Bangalore Water Supply and Sewerage Board v. A. Rajappa and others, and other connected matters (AIR 1978 SC para 548) considered in detail as to what constituted an "industry" within the meaning of Section 2(j) of the Act and laid down the dominant nature of the test to be applied for determining whether an undertaking was an industry. Their Lordships said ‘The consequence are (i)

professions, (ii) clubs, (iii) educational institutions, (iv) cooperatives, (v) research instituted, (vi) Charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j). In Following the decision of their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa and others, (supra) the Madhya Pradesh High Court in Krishi Upaj Mandi Samiti, Sagar case, (1982 Jabalpur Law Journal, 258, at page 266) held that the Krishi Upaj Mandi Samiti (which is performing similar functions as the Mandi Samiti in U.P.) created under Krishi Upaj Mandi Adhiniyam, 1978 was an industry. A similar view has been taken by a Division Bench of the Punjab and Haryana High Court in Rajbir Singh and others v. State of Haryana and others (1983 (1) Services Law Report, page 38) holding Haryana State Agricultural Marketing Board and Market Committees performing analogous functions like the Mandi Samiti in Uttar Pradesh to be an industry within the meaning of Section 2(j) of the Act. The learned counsel for the opposite parties also conceded to the legal proposition that the Mandi Samiti in the instant case was also an industry despite a plea to the contrary in the counter affidavit.

6. Coming to the question of regularisation as a result of having served for two years one month and two years eleven months respectively, it would be seen that Section 25 (F) of the Act 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

(a) the workman has been given one month's 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.

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of services.

(b) the workman has been paid, 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 and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by appropriate Government by notification in the Official Gazette.?

It will thus be seen that the termination of the petitioners services under the said Act is not justified and is against the provisions of law and that, in fact, the petitioners were entitled under Rule 77 of the Rules framed under the Act for regularisation of their services. The instant case would not be a case of retrenchment since subsequently 17 posts were sought to be filled up and there was no justification for the same when the petitioners were legally and validly selected and appointed and continuously worked for 762 and 1072 days

respectively. We have no hesitation in holding that the termination of the petitioners' services is legally unsustainable and against the spirit and provisions of the Industrial Disputes Act.

7. In the result the writ petition succeeds and is allowed. The termination order, if any, passed by the Mandi Samiti is quashed. Let a writ of certiorari issue accordingly. We further command the opposite parties to treat the petitioners to be in continuous service from the date of termination with all the attendant benefits including the benefit of revision in pay, wages, allowances etc. according to rules from time to time and consider the petitioners' case for regularisation of their services in accordance with law. A writ of mandamus shall issue to this effect. We, however, in the circumstances of the case, direct the parties to bear their own costs.

[Petition allowed.]