

(1988) 11 AHC CK 0046
In the Allahabad High Court
Case No : C.M. Writ No. 10655 of 1988

Brij Mohan Agarwal

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Citation : (1989) 58 FLR 561 : (1990) 1 LLJ 529

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—The petitioner Brij Mohan Agarwal is arguing the matter in person. He has been heard on many days. He challenges the award of the Labour Court (I) U. P. Sarvodaya Napor, Kanpur. The award is dated December 22, 1975 (1985?). The petitioner was a probationer. The period of probation was for three months. He had worked for 17 days and the probationary period was drawn to a close, the asserts, abruptly. Messrs Hindustan Chains Private Limited, Kanpur, the employer, paid the petitioner for the duration of the period when he worked. This was 17 days. The petitioner was not satisfied with the action of the employer. He raised an industrial dispute after conciliation between the employer and the employee failed. Initially the State declined to refer the matter for adjudication in 1978, on being satisfied that it was not a matter which needs to be referred before the Labour Court. Three years later apparently the petitioner persuaded the State Government that the matter should be referred. Thus, it was referred to for adjudication belatedly before the Labour Court (I), Kanpur and was numbered as Adjudication Case No. 200 of 1973 (1983?). The Labour Court after having examined the matter, thereafter came to the conclusion that the petitioner was not entitled to any relief and certified the action of the employer of terminating the services of the petitioner after 17 days of work. The petitioner being aggrieved by the award of the Labour Court, aforesaid, filed the present petition before this Court.

2. This Court does not find the award of the Labour Court correct. The Court feels that, the petitioner's services could not be ended abruptly after 17 days regard being had to the contention of the employer that the period of probation was curtailed not because of misconduct but on the ground of simple inefficiency as the workman would not work. If that be so then the law is settled that probation must see its duration and the employer, if unsatisfied with the work of the workman, must bide his patience in ending the period of probation at the close of it and not midway, otherwise the probationary period will become a handle for an employer to fire a workman and resort to unfair labour practice in getting the workman during probation, fired prematurely. The employer may, the law suggests, curtail the period of probation prematurely only on account of misconduct. If such an action is taken then of course the workman is entitled to receive an opportunity to explain the charge of misconduct against him as it affects his personal credibility and reputation. These are, thus, the parameters of the dispute as examined by this Court.

3. The Court will revert to this aspect on merits later. It needs to be placed on record that the petitioner filed his petition, in effect, with a submission that he was an indigent person. This was when the Court enquired from him why he had not appended court fees on the writ petition. The Court was satisfied from the submission of the petitioner, otherwise too from the record, that he was such a person who is not in a position to pay expenses and court fees. At this juncture the court suggested to learned Standing Counsel for the State of U.P. that this is a case where the State must draw funds from the legal aid fund and provide court fees. In fairness, it must be said that the Standing Counsel immediately arranged for court fees which were appended on the writ petition. The Court also felt that the petitioner may need counselling and asked him whether he would require the services of the lawyer, though gratis. The petitioner accepted the suggestion of the Court and made a request that a lawyer be appointed to plead his case, Learned Counsel Mr. A.K. Sinha, Advocate of this Court was appointed; he is a young colleague of Mr. K.P. Agarwal, Senior Advocate. Subsequently he had to withdraw as the petitioner made a submission before this Court that he does not desire the services of counsel and would argue the matter in person. As the court cannot interfere with the personal choice of the petitioner his wishes must prevail and arguments proceeded.

4. Though the petitioner intimated the Court that while he has been arguing the matter he has otherwise had access to the chambers of Mr. K.P. Agarwal, Senior Advocate to receive books and journals.

5. After the matter had been heard at length the Court was satisfied that with the probationary period having been curtailed prematurely the petitioner as workman was entitled to receive the entire monies representing the probationary period and that it was not correct of the Labour Court to have answered the reference against the petitioner when the employer paid him 17 days wages. This Court also felt that if the petitioner is to receive monies for the entire

probationary period then notwithstanding that his services were terminated 19 years ago, he is entitled to receive monies for the entire probationary period with interest. The Court has already declared it so to the petitioner and the employer that this interest will stand at 10%. This implies that barring 17 days of wages which has been received by the petitioner the wages representing the rest of the probationary period ought to be paid to him with 10% interest. Learned counsel appearing on behalf of the employer. Mr. R.K. Tiwari, Advocate accepted the proposition of the Court. At this stage the Court also asked the employer that it is not necessary that the workman must receive monies which will now be payable to him as a consequence of moving an application u/s 33-C(2) of the Industrial Disputes Act, 1947, It would be better if the petitioner were to be saved further litigation and the amount which now will be payable to him is paid to him direct. The Court asked the petitioner whether he would like payment in terms of order made by this Court by being made available, before the Court on a date indicated when this may be made over to him. The petitioner expressed a desire that the payment be made by a bank draft and be sent to his address. The address as given by the petitioner at the Bar of the Court is Brij Mohan Agarwal, 4400, Church and Mission Road, Delhi-110006. This is the same address as is on the format of the writ petition. Upon hearing the declaration of this Court as above, the petitioner insists it is the order of reinstatement which he must have and desired that this court notices certain cases cited by him. As the petitioner feels dissatisfied notwithstanding that the petition is being allowed and in the face of the order of this Court that the amount of 17 days wages was incorrect and he must have the entire wages for the entire probationary period, the court is noticing the cases cited by the petitioner.

6. The petitioner desires the Court to accept the proposition that the termination of his services is illegal during the period of probation and that his probation continues and he is entitled to reinstatement upon a declaration by this Court that he is a permanent employee. The Court has already indicated on what the court had expressed. Monetary reliefs to the petitioner cannot be stretched more than the duration of the probationary period.

7. The petitioner desires that the court notice the cases which he has cited at the Bar.

8. The petitioner cited the matter of Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, . This decision is not on the contention which the petitioner desires this Court to accept. In fact, this is the decision on the basis of which this Court has taken recourse to directing the employer in the present case to pay the petitioner the entire wages for the probationary period along with interest. The Supreme Court in the aforementioned decision had held that should a period of probation be six months, it gives the employer no right to terminate the services of the employee before six months have expired, except on the ground of misconduct or other sufficient reason on which the services of a permanent employee could be

terminated, and that, at the end of six months period the employer can either confirm or terminate his services because his service is found unsatisfactory. In the petitioner's case the intention to terminate his services was expressed by the employer when the services were terminated prematurely during the period of probation. It is in reference to this that the Court has held that this was irregular and could only happen at the end of the period of probation.

9. The petitioner cited the decision of *The State Bank of India Vs. Shri N. Sundara Money*, . This case has been more misunderstood than understood. The workman Sundara Money had discharged "continuous service" within the terms of the Industrial Disputes Act, 1947 between the period 31st July, 1973 and 29th August, 1973. Thus, the employee had come into the eclipse of having discharged continuous service and consequentially entitled to the relief against illegal retrenchment. He had worked during the period of one year for more than 240 days. The Supreme Court held that the broken bits of service notwithstanding and further notwithstanding that last employment was for 9 days the workman was entitled to retrenchment compensation. In reference to reinstatement, the Supreme Court had clarified that it was not laying down any general proposition of law to make a direction for reinstatement by placing a workman below all permanent employees in that cadre with the declaration that he would be a temporary hand without any advantage in the matter of seniority or priority later so amongst temporary employees. In the case before this Court the petitioner had never at any stage discharged continuous service and his period of probation had not been completed satisfactorily. Further, the services of the petitioner would still not be continuous service as the law recognises it, even if" he were to complete the period of probation for three months.

10. The next case cited by the petitioner is in the matter of *The Management of Brooke Bond India (Private) Ltd. Vs. Y.K. Gautam*, . The workman in this case held a post which was not of trust and the period of probation having been curtailed prematurely, the award of the Tribunal reinstating the workman was upheld. In the present case the order of the Labour Court sets it on record that the petitioner held a post of trust and one of fiduciary capacity. The petitioner cannot insist that he will continue to hold this fiduciary capacity even if the employer has lost confidence in him. But in law it is clear that the petitioner's services could only be dispensed with upon the period of probation coming to an end. The facts of this case cited by the petitioner are not similar to the case before this Court.

11. The next was in the matter of *L. Michael and Another Vs. Johnson Pumps Ltd.*, . This was not a case regarding a probationer. Michael was a workman, who was a permanent employee of proven efficiency and six years standing. It is in these circumstances that when his services were terminated with a notice of giving him one month's notice pay that the issue gave rise to an industrial dispute. The case is out of context, from the petitioner's case.

12. Next the petitioner placed the case of *K.C. Joshi Vs. Union of India (UOI)* and

Others, . This case also does not refer to a probationer under industrial adjudication and is otherwise a matter relating to whether the employees of statutory corporations are entitled to protection under Article 311. This case was also out of context.

13. The next case cited by the petitioner is of the Gauhati High Court in the matter of Akon Saikia v. Assam State Electricity Board 1988 Lab. I.C. 503. This case is also out of context. The matter relates to a job given by a public sector undertaking though temporary for 90 days. Candidates from a certain district were preferred than the petitioner and thus he received notice terminating his services. The Gauhati High Court took the view that once the petitioner had been appointed his services could not be terminated merely for the reason that the job requirement was to be satisfied from a certain district to which the petitioner did not belong.

14. Thus, the cases cited by the petitioner are not applicable to the facts and circumstances which have been considered by this Court.

15. The case which does apply in the facts and circumstances of the present case is in the matter of Ajit Singh and Others Vs. State of Punjab and Another, . The Supreme Court observed, in effect, that the period of probation gives a sort of locus paenitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is not suitable for the post, the master reserves his right to dispense with his services without anything more during or at the end of the prescribed period which is styled as period of probation. The Supreme Court further observed that viewed from this aspect, the Courts have held that termination of service of a probationer during or at the end of a period of probation will not ordinarily by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to.- The Supreme Court held that the period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires, to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service.

16. In the present case the Court has taken the view that the employer could not curtail the period of probation prematurely at his asking and indeed if he was intending not to keep the petitioner in his service then he should have dispensed with his services at the end of probation.

17. Consequently this Court has directed that the salary for the entire period of probation be paid to the petitioner with interest. Thus, barring seventeen days salary which the petitioner has already received, the petitioner shall be paid by the respondent No. 2 the salary between the period 12th July, 1969 to 12th October, 1969 at Rs. 300 per month along with compound interest at 10% per annum.

18. The award dated 22nd December, 1975 (1985?) of the Labour Court (I),

Kanpur in Adjudication Case No. 200 of 1973 (19832). Annexure VI to the writ petition, declaring that the petitioner is not entitled to any relief, suffers from a manifest error, and is quashed. The reliefs to which the petitioner is entitled under the law have been granted by this Court, as above.

19. As the respondent No. 1, the erstwhile employer has readily accepted the grant of reliefs by this Court without taking issues, the writ petition is allowed, with costs on parties. The cost of court fees on the writ petition were in any case paid by the State of U.P. from the legal aid fund.

20. A certified copy of this judgment without charge be sent to the petitioner as he argued in person, by registered post but under simultaneous intimation to the respondent No. 1 of the despatched letter.