
(1998) 07 AHC CK 0010
In the Allahabad High Court
Case No : Writ Petition No. 6877 of 1988

Deo Narain Tiwari

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 4K, 6N

Citation : (1998) 4 AWC 351 : (1998) AWC 351

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : M.C. Sinha and T.N. Saxena, for the Appellant; C.S.C., for the Respondent

Judgement

R.H. Zaidi, J.—By means of this petition under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the Award of Labour Court, Varanasi in adjudication Case No. 166 of 1985, rejecting the claim of the petitioner. Prayer for grant of consequential benefits such as payment of back wages etc, has also been made.

2. Proceedings before Conciliation Officer yielded no result, therefore, vide Government Order dated 19.6.85 reference was made u/s 4K, of the U. P. Industrial Disputes Act, 1947 (for short the "Act") to the labour court. The disputes in substance was "Whether termination of the workman Dev Narain (for short the petitioner) from service on 11.10.83 by M/s. K. M. Sugar Mills Limited, Motinagar, District Faizabad, (for short, the "employer") was proper and legal. If not, to what relief the workman was entitled."

3. Petitioner filed written statement before the labour court in the abovenoted case pleading that he was appointed as "store purchase clerk" on a consolidated salary of Rs. 300 per month. He worked from 1.9.79 to 11.10.83. On 11.10.83 his services were illegally terminated, which amounted to retrenchment within the meaning of term used under the Act, without giving statutory notice or

compensation in lieu thereof, without paying retrenchment compensation and without notice to state in violation of provisions of Section 6N of the Act. He, therefore, prayed for his reinstatement and the back wages as stated above.

4. On the other hand "the employer" tiled written statement, pleading that the petitioner was appointed as a trainee store-boy, at the instance of one N. N. Tewari, clerk of State Bank of India on daily wage basis @ Rs. 10 per day. In September. 83 an amount of Rs. 24,874.85 paise was found due against him which he has not accounted for. He was asked to account for and pay the aforesaid amount. But, neither he accounted for the said amount, nor paid the same. From October 7 to October 11, petitioner remained on special leave. On 12.10.83, he absented from duty without any leave. He misappropriated the aforesaid amount and did not come back to attend to his duties as he did not want to pay the aforesaid amount. It was pleaded that the petitioner himself left the Job on 12.10.1983, therefore, he was not entitled to any relief.

5. Parties in support of their cases, produced evidence oral and documentary.

6. Labour court permitted the parties to inspect the record of the case jointly. Subsequently a joint report was submitted before the Labour court. After perusing the record and hearing the parties, Labour court returned the findings that from 7.10.83 to 11.10.83, petitioner remained on special leave and left the job from 12.10.83. He absented from duty, without taking any leave. He was working in the store and used to make purchases of store at Bombay, Pune, Allahabad, etc., that an amount of Rs. 24,018.35 paise was outstanding against him as was evident from the joint report submitted by the parties. Wages upto 11.10.83 were already paid to him, it was not proved that the services of the petitioner was never terminated by the employer on 11.10.83 as the petitioner worked upto 12.10.83, that there was no evidence on record, of the payment of Rs. 24,018.35 paise which was outstanding, against the petitioner and that petitioner himself left the job so that he may not be asked to pay the amount outstanding against him. Having recorded the aforesaid findings, claim of the petitioner was rejected and, Award was given by the labour court against him on 15.6.1988.

7. In spite of the service of notice upon respondent No. 3 which was held sufficient vide Registrar's order dated 20.8.95, but none appeared on behalf of the said respondent.

8. I have heard the learned counsel for the petitioner, learned standing counsel and carefully perused the record of the case.

9. Learned counsel appearing for the petitioner vehemently urged that the labour court has exceeded its jurisdiction in taking into consideration the question of misappropriation of amount of Rs. 24,018.35 paise and erred in law in holding that the petitioner's services were never terminated by the employer, that he has himself left the job on 12.10.1983, therefore, he was not entitled to any of the reliefs claimed by him.

10. Learned counsel for the petitioner in support of his submissions referred to and relied upon the order/reference made by the State Government u/s 4K of the Act. It was vehemently urged that only the question with regard to the validity of the termination of the petitioner's service was referred to the Labour Court for adjudication.

11. On the other hand learned standing counsel supported the validity of the impugned orders. It was urged that the order passed by the Labour Court was concluded by findings of fact, which are based on relevant evidence.

12. I have considered the submissions made by the learned counsel for the parties, in the light of material on the record.

13. In the written statement filed on behalf of the employer, factum of termination of the service of petitioner was emphatically denied. It was pleaded that the petitioner himself voluntarily left the job. Reasons for leaving the job by the petitioner, was stated to be that an amount of Rs. 24,018.35 paise was outstanding against him, as was evident from the joint inspection report submitted by the parties which he did not want to repay. On the other hand, it was asserted by the petitioner that the aforesaid amount was already accounted for, nothing was outstanding against him and, therefore, there was no question of his leaving the job, and that his services were illegally terminated by the respondent No. 3. It was, therefore, obligatory upon the labour court to find out and record clear and categorical finding as to whether the services of the petitioner were terminated by the employer or he himself has left the job for the reasons disclosed in the written statement filed by the employer. Plea taken by the petitioner that the amount in question was accounted for to Mr. S. C. Agrawal and Mr. R. C. Agrawal, was not accepted and was rightly rejected by the labour court for want of the relevant evidence on the record. Submission made by the learned counsel for the petitioner that the Tribunal has travelled beyond the scope of reference made to it, under the facts and circumstances stated above, cannot be accepted. A reference made to the labour court cannot be decided without taking into consideration the pleas taken by the employer in defence, and the evidence produced in support thereof.

14. Findings recorded by the labour court to the effect that amount of Rs. 24,018.35 paise was outstanding against the petitioner which was never repaid or accounted for by him and as he did not want to repay the same and that he himself voluntarily left the job are findings of fact and are based on relevant evidence, oral and documentary on the record, including the admission made by the petitioner. Labour court recorded cogent reasons for the said findings. I do not find any illegality or infirmity in the findings recorded and the order passed by it. It was rightly held that the services of the petitioner was never terminated by respondent No. 4 on 11.10.1983 and that he himself left the job on 12.10.83.

15. The next argument raised and pressed by the learned counsel for the petitioner was that even if the petitioner has voluntarily left the job, it amounted

to retrenchment, as respondent No. 4, after the petitioner had left the job, did not serve upon him a notice as contemplated u/s 6N of the Act. Section 6N of the Act provides as under :

"6N. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under on employer, shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reason 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 retrenchment of service ;

(b) the workman has been paid, at the lime of retrenchment, compensation, which shall be equivalent to fifteen days" average pay for every completed year of service or arty part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the Slate Government."

16. From the reading of the aforesaid section, it is evident that in case of a workman who has put in one year service, it is obligatory upon the employer to give one month's notice or pay one month's wages in lieu thereof, to the workman, if he wants to retrench him from service. It is also provided that at the time of retrenchment compensation equivalent to fifteen days average pay for every completed year of service or part thereof in excess of six months shall be paid to the workman. A notice in the prescribed manner is also required to be served on the State Government.

17. Under clause (s) of Section 2 of the Act, term "retrenchment" has been defined as under :

"(s) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment inflicted by way of disciplinary actions, but docs not include-

(i) voluntary retirement of the workman, or

(ii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf."

18. It is evident from the aforesaid definition that retrenchment requires overt act of termination of the services by the employer for whatsoever reason or in whatever form it may be ; but same does not include voluntary retirement of the workman. In my opinion, word voluntary retirement in the aforesaid clause has been used in general sense. It also includes voluntary resignation from service and voluntary abandonment of service by workman, as in either case, consequences are the same. In the Act or the Rules framed thereunder, no

procedure for voluntary retirement has been prescribed. It simply means leaving the job voluntarily.

19. Learned counsel for the petitioner in support of his argument that even in the case of voluntary abandonment of service by the workmen amounted to retrenchment and even in that case it was obligatory upon the employer to comply with and fulfill the requirements of Section 6N of the Act referred to and relied upon the decision of Bombay High Court in Gauri Shankar v. Legal Construction Pvt. Ltd. and another 1987 (55) FLR 689 (Bom). I have gone through the aforesaid decision. In my opinion, the said decision is distinguishable on facts and also does not lay down law correctly, as it is in the teeth of decision of Apex Court to the contrary. In the said case, the Labour Court recorded clear and categorical finding that workman himself voluntarily abandoned the service, but the High Court reversed the said finding of fact and held that :

"It is, therefore, difficult to believe that the workman who had worked continuously for six to seven years, would abandon his service for no rhyme or reason.....

We have, therefore, no hesitation in holding that the finding recorded by the Labour Court is prima facie bad in law and the order of Labour Court should be set aside."

Having disbelieved the case of the employer and having recorded the aforesaid finding, the Court has taken the view that it was obligatory upon the employer to fulfill the requirements of giving of a notice and paying compensation in lieu thereof, etc.

20. Aforesaid controversy stands concluded by the decision of Supreme Court in J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, , wherein in paragraph 8 of the judgment it was ruled as under :

".....The meaning of the term "resign" as found in the Shorter Oxford Dictionary includes "retrenchment". Therefore, when an employee voluntarily tenders his resignation, it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression "Voluntary retirement" within the meaning of Cl. (i) of Section 2 (s) of the State Act. In Santosh Gupta Vs. State Bank of Patiala, , Chinappa Reddy. J. observed as under (at p. 1220 of AIR) :

"Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman."

(Here the work "retrenchment" has reference to retirement)."

21. Even Bombay High Court in a latter case of Managing Director v. Babasahab Devgonda Patil and Anr. 1988 Lab IC 288, took the view that where the workman remained absent without leave for more than three years continuously, workman

not asking for leave and not caring to explain his absence, he must be deemed to have abandoned the service voluntarily. Removal of the name of workman from the roster was a mere formality and did not amount to retrenchment and that in such a situation the workman was not entitled to the relief of reinstatement in service and wages.

22. In the case of Managing Director (*supra*), the facts of the case were similar to the facts of the present case, inasmuch as in that case the workman has misappropriated an amount of rupees fifteen thousand and thereafter absented for about three years without leave continuously. In the present case, the petitioner has misappropriated an amount of Rs. 24,018.35 paise and thereafter absented from duty without leave for more than two years.

23. In *Khettriya Sri Gandhi Ashram Magahar v. Ram Samujh Maurya and another* 1990 Lab IC 1406, this Court observed as under :

"In cases where services stand terminated automatically principles of retrenchment cannot be applied. Abandonment of job is one such instance. If a workman himself willingly abandons, his job it cannot be said that he has been retrenched and the question of paying compensation in these circumstances would not arise. Where the workman absented for more than two years without leave and in spite of fact that large number of letters were sent to him and various notices were published in newspapers by the employer from time to time the workman neither cared to join the duties nor contacted the employer and remained absent, absence for such a long period without rhyme or reason lead to the conclusion that the workman abandoned his job and as such his services stood terminated automatically."

I fully agree with the view taken in the abovenoted decision.

24. It was in view of the aforesaid facts and reasons that the writ petition was dismissed by this Court in 14.7.98.

Writ petition fails and is accordingly dismissed, but without any order as to costs.