

(2004) 11 AHC CK 0143

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21666 of 2002

Dinesh Kumar Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2

Citation : (2005) 1 UPLBEC 296

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : B.B. Sirohi, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

2. This petition is directed against an award dated 16.3.2000 passed by the Labour Court, Agra (U.P.) in Adjudication Case No. 338/98.

3. The petitioner raised an industrial dispute before the Conciliation Officer alleging that he had been wrongly terminated from service with effect from 26.4.1997. As no amicable settlement could be arrived at between the parties, the following reference was made to the Labour Court, Agra:-

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"Whether termination of service by the employers of their workman Sri Dincsh Kumar Chauhan Son of Sri Kanhi Singh Chauhan (skilled labourer) w.c.f. 26.4.1997 is legal and justified? If not, to what damages/reliefs is he entitled to and to what extent?"

FACTS OF THE CASE :

4. According to the petitioner-workman, the respondent-employers appointed him in the year 1988 in their unit at Langare-Ki-Chauki, Agra. Thereafter he was transferred to the second unit of the employers at Mathura Road, Agra and his services were terminated there w.e.f 26.4.1997 in violation of Section 6-N of the UP. Industrial Disputes Act, 1947.

5. The employers contested the claim of the workman before the Labour Court, inter alia, alleging that they had never terminated the services of the concerned workman, who had in fact abandoned his services and as such the reference order was bad in law. According to them the petitioner had himself abandoned his services w.e.f. 26.4.1997 and had raised the dispute with ulterior motives and design. The case of the employers is that their establishment at Langare-Ki-Chauki is not their unit and they have no concern with it.

6. The parties exchanged counter and rejoinder affidavits and also adduced oral and documentary evidence before the Labour Court.

7. The workman had also collected his earned wages for the months till April, 1997 without any protest or complaint. Though the workman had stated in his oral evidence before the Labour Court that he was willing to join his services but no such pleading was taken by him in his written statement and as such it appears that the evidence of the workman was as a result of second thought also for the reason that during conciliation proceedings the employers had offered service to the workman but he did not accept the same.

8. The Counsel for the petitioner raised the following points for consideration in his arguments :

(i) Whether the termination of services of the workman Dinesh Kumar Singh Chauhan on 26.4.1997 amounts to "retrenchment" within the meaning of Section 2 (s) of the U.P. Industrial Disputes Act, 1947 and 2 (oo) of the Industrial Disputes (Central) Act, 1947?

(ii) Whether the Labour Court can go in the validity of the reference order?

9. He submits that the term "retrenchment" is defined in Section 2 (s) of the U.P. Industrial Disputes Act, 1947 and Section 2(oo) of the Industrial Disputes Act (Central). 1947. The definition of "retrenchment" in the aforesaid two Industrial Disputes Acts is as under:-

"2. (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 action, but does 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,"

Industrial Disputes Act (Central), 1947 :

"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

(bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) Termination of the service of a workman on the ground of continued ill health."

10. The phrase "any reason whatsoever" has been considered by the Hon"ble Supreme Court in *State Bank of India v. N. Sundar Mony* (1976) 1 SCC 82. Relevant part of paragraph 9 of the judgment is reproduced below:-

"A breakdown 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 howsoever produced. May be, the present may be a hard case, but we can visualize abuses by employer, 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 to moksha from Section 25F(b) is inferable from the proviso to Section 25F(a). True, the section speaks of retrenchment by the employer and it is urged that some act of violation 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."

11. Labour Court after considering the evidence and rival contentions of the

parties concluded that the workman had worked till 26.4.1997 and had been paid wages for the period he had worked and as such no dispute arose on 26.4.1997. The reference order is, therefore,, bad in law. The Labour Court further held that it is proved from the evidence that the workman had himself abandoned his services. He also did not make any demand for re-instatement in service in the notice sent by him through his Advocate for finalization of his dues/account. The Labour Court concluded that it is conclusively proved that the services of the petitioner were not terminated by the employers and on the contrary the workman had himself abandoned his services, as such he was not entitled to any payment or compensation as he has already been paid all his wages upto the date he worked.

12. The findings of facts recorded by the Labour Court are based on record and appreciation of evidence.

13. Since the Labour Court has given a categorical finding of fact that the petitioner had himself abandoned his services and they had never terminated his services, as such there was no retrenchment/termination of services by the employers.

14. In so far as the decision rendered in D.K. Yadav v. J.M.A. Industries 1993 (67) FLR 111 is concerned, it is a case of termination of services in pursuance of Clause 13(2) of Standing Orders providing that there will be automatic loss of lien if the employee failed to join his duties after expiry of leave. Moreover, in that case the Court was considering the provisions of Article 309 of the Constitution and not the question of abandonment of service. In fact the petitioner had abandoned the services on his own sweat will and as such there was no question of affording any opportunity by the employers or compliance of statutory provisions of Section 6-N of the UP. Industrial Disputes Act, 1947 before termination of his services.

15. The facts of D.K. Yadav's case (supra) and of the present case as well as the case of N. Sunder Mony in State Bank of India v. N. Sunder Mony (1976) 1 SCC 82. are clearly distinguishable on law and facts and are not applicable to the facts and circumstances of the case. The case of N. Sunder Mony is not a case of termination.

16. The case of the employers in the present case is that Langare-Ki-Chauki is not their unit and they have no concern with the same. It was further the case of the employers that the petitioner-worker has himself abandoned his services and the respondent-employers had not terminated his services.

17. In so far as the question of validity of reference order is concerned, the employers in their written statement raised it but the workman has not denied the same in his rejoinder-affidavit. He also did not argue on the point before the Labour Court and as such the petitioner cannot take this plea in this writ petition for the first time.

18. Admittedly the workman was a daily wage employee and was not a permanent employee in the establishment of the respondent-employers. The Counsel for the petitioner has not been able to show any illegality or perversity in the impugned order requiring interference by this Court under Article 226 of the Constitution.

19. The Counsel for the petitioner in this writ petition has raised no other argument.

20. With the above observations this writ petition is dismissed. The parties shall bear this own costs.