
(1997) 12 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No's. 72 and 2460 of 1981

District Co-operative Federation, Ltd.	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6N, 6P, 6Q

Citation : (1997) AWC 626 Supp

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : Triloki Nath, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—In Civil Misc. Writ Petition No. 72 of 1981 a reference u/s 4K of the U.P. Industrial Disputes Act, 1947 regarding the dispute relating to the removal of Ram Vir Singh from service with effect from 18.9.1978 led to the impugned award of the Labour Court whereunder the Respondent No. 2 in Civil Misc. Writ Petition No. 72 of 1981 was reinstated with certain directions including a direction entitling the workman to get compensation from the employer-Petitioner in Civil Misc. Writ Petition No. 72 of 1981 at the rate of Rs. 250 per month so long as the workman continued in service and so long as the concerned workman remained unemployed.

2. Both the Petitioners in Civil Misc. Writ Petition No. 72 of 1981 and Writ Petition No. 2460 of 1981 felt aggrieved by the impugned award. The Petitioner-employer has prayed for the quashing of the impugned award dated 29.7.1980. The workman, Petitioner however, has prayed for the modification of the impugned award seeking reinstatement with full back wages and has prayed for a direction to treat the Petitioner as being in employment and entitlement to full back wages and other allowances with effect from 18.9.1978 till the date of reinstatement. In the alternative, he has prayed for a direction requiring the Labour Court to

rehear the whole matter and decide the same in accordance with law.

3. I have heard Shri Triloki Nath, Advocate for the employer and Shri K. P. Agarwal for the workman concerned and have carefully perused the record.

4. The facts in brief shorn of details and necessary for the disposal of this case, lie in a narrow compass. The workman Ram Vir Singh claims to have been appointed on 1.11.1977 on a consolidated salary of Rs. 250 per month as a truck cleaner. He further claims that he had been transferred and posted as Chaukidar in May, 1978. However, without any justification his services were dispensed with on 18.9.1978 and in his place another person Bhagwan Singh had been appointed. Apart from Bhagwan Singh the employer had appointed another person Vijay Pal Singh also. He claims that his services had been dispensed with in an illegal manner.

5. The employer, however, claims that Ram Vir Singh the workman was initially appointed as truck cleaner on daily wage basis on payment of Rs. 5 per day. It is asserted that on 22.12.1977 Ram Vir Singh was appointed by the President of the Federation as a temporary cleaner on consolidated pay of Rs. 250 per month. This appointment was purely temporary and liable to termination at any time without notice. It is, further asserted that the workman Ram Vir Singh on his own request was sent to Sadabad. On account of nonavailability of any post of truck cleaner there, he was appointed as Chawkidar by the President. In paragraph 4 of the employer's writ petition it has been indicated that the President of the Federation in pursuance of the request made by the workman ordered his transfer as Chawkidar at Sadabad in place of Prithvi Singh, who was posted there and was transferred to Head Quarter at Mathura.

6. The employer has further asserted that the recruitment and conditions of service of its employees are regulated by U.P. Co-operative Societies Employees Service Regulations, 1975. It was alleged that the workman's services were dispensed with on the appointment of Chaukidar on regular basis through the Institutional Service Board and the reference itself was bad.

7. The Labour Court after carefully considering the evidence and materials brought on record, came to the conclusion that the workman had, before the date of reference, made a demand for reinstatement but the same was not accepted by the employer so the reference was not bad. It was further found that the appointment of the workman had been made after the regulations had been enforced and was not in accordance with the relevant Regulation No. 5 so it was an illegal appointment and therefore the termination need not have been made in accordance with the Regulation 19 (a) which requires prior one month's notice or pay in lieu thereof. It was further observed that the workman continued to be a temporary servant and so the termination of the service though abrupt, cannot be said to be invalid. The Labour Court, however, proceeded to hold that the service regulations could not in view of the Regulation 103 operate inconsistently with the provision of Industrial Dispute Act, 1947 or the other law

applicable to the service of the workman. It was found that the impugned termination of service was bad in law as employees junior to the workman concerned were continued in service and further appointments were made without giving the workman opportunity for reemployment violating the provision of Section 6Q of the U.P. Industrial Disputes Act, 1947. The Labour Court was of the view that considering the circumstances the junior most ought to have been first retrenched and in case retrenchment was necessary because the appointment was itself illegal, all such employees ought to have been retrenched. However, the retrenchment of the workman alone was not bona fide and he deserved to be reinstated. In the aforesaid circumstances the Labour Court had issued the impugned direction.

8. The learned Counsel for the Petitioner in Civil Misc. Writ Petition No. 72 of 1981 has strenuously contended that the workman Respondent was not entitled to any protection envisaged under the provisions of U.P. Industrial Disputes Act specially Section 6N thereof which provides certain conditions precedent to be satisfied before affecting retrenchment of workman pointing out that the expression "employed" as contained therein refers to a valid employment in the industry and an appointment or continuation thereof which was statutorily prohibited could not be taken to be an appointment so as to confer the status of an "employee" as contemplated u/s 6N of the Act which may entitle a workman to avail the benefits secured thereunder.

9. What has been contended is that the Petitioner society fell within the purview of the U.P. Co-operative Societies Employees Service Regulations, 1975 framed u/s 122 of the U.P. Co-operative Societies Act, 1965 which prescribed the mode of recruitment and appointments in Co-operative Societies. Reference has been made to Regulation 5 of the aforesaid Regulations which clearly require that the recruitment for all appointments in a co-operative society were to be made through U.P. Co-operative Institutional Service Board. These regulations govern besides other modes of appointments to be made directly. Regulation 5 (ii) however, provides for certain exceptions authorising appointment by direct recruitment as a stop-gap-arrangement to be made by the appointing authority for a period not exceeding six months.

10. In the present case, it is not disputed that the workman had been appointed initially on the post of Truck Cleaner on daily wage basis but by an order dated 22.12.1977 passed by the President of the Federation he had been appointed as a temporary cleaner on the consolidated pay of Rs. 250 per month whereafter he was posted as Chaukidar. The Petitioner claims that he has been in the service for the period 30th October, 1977 to 16.9.1978, i.e., for a period of over six months.

11. The fact that the aforesaid appointment granted to the workman was in flagrant disregard of the statutory prohibition stipulated in the provisions contained in the U.P. Co-operative Societies Service Regulations, 1975 is not disputed. In fact, the finding returned by the Labour Court against the workman

holding that the appointment in question was not made in accordance with the relevant Regulation No. 5 and it was illegal has not been challenged in the present proceedings.

12. The question which arises for consideration, therefore, is as to whether in such a situation when the appointment of the workman itself is in violation of the statutory prohibition, the benefits available or secured in favour of a workman under the Industrial Law regulating the relationship of the master and servant could be extended to such an appointee falling in the category of a workman.

13. The provisions contained in Section 6N of the U.P. Industrial Disputes Act as indicated hereinabove while laying down the conditions precedent for affecting a retrenchment extend the benefits stipulated therein to a workman employed in any industry. I am clearly of the opinion that the existence of the relationship of employer and employee is the essence of the matter. The expression "employed", taking into consideration the scheme underlying the Act and the Regulations, it seems to me, clearly envisages an employment which gives rise to a relationship of master and servant which should be adequate in law and not otherwise than in accordance with law in any manner.

14. In the aforesaid connection, what is noticeable is that an appointment taking recourse to the method of direct recruitment for a period exceeding six months had to be made through the U.P. Co-operative Institutional Service Board and any appointment made in violation of the aforesaid provision was to cease to have effect from the date on which the period of six months expired. The provision to this effect as contained in the U.P. Co-operative Societies Employees Service Regulations, 1975, it seems to me, is mandatory and not directory. The aforesaid provision in effect imposes a check over unscrupulous arbitrary back door appointment of undeserving candidates without following the principles underlying Articles 14 and 16 of the Constitution of India. If a person is appointed in flagrant disregard of the mandatory requirement referred to hereinabove such an appointment has to be taken as non-est in the eyes of law.

15. It may be usefully noticed at this stage, the observations of the Apex Court in its decision in the case of State of Punjab Vs. Jagdip Singh and Others, , occurring at page 525 of the report which are to the following effect:

In our opinion where a Government Servant has no right to a post or to a particular status though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law will be deemed to have been validly appointed to the post or given a particular status.

16. In the present case, what I find is that the appointment on the basis whereof the concerned workman claims to have been employed and has asserted the continuance of the relationship of master and servant so as to claim the protection envisaged u/s 6N of the Act could not be treated to be an appointment in the eyes of law or taken to be the basis for holding the continuity of service or

the relationship of master and servant which could entitle the workman concerned a security of tenure or any other benefit contemplated under the U.P. Industrial Disputes Act.

17. The learned Counsel for the Respondent has, however, urged that the Petitioner-employer cannot take advantage of his own wrong. The submission in essence is based on the principle of estoppel. This principle of estoppel, cannot, in my opinion, come to the rescue of the workman as there could be no estoppel against the law. The workman concerned has come forward in this case seeking protection envisaged under the provisions of the U.P. Industrial Disputes Act. He has to satisfy that he had been employed in accordance with law and a valid relationship of master and servant was continuing on the date of the impugned action of the employer. This basic requirement had to be satisfied by the workman who had initiated the proceedings giving rise to the impugned award before any relief could be granted to him under the provisions of the U.P. Industrial Disputes Act. Even according to the finding returned by the Labour Court, this requirement was not satisfied at all. That being so, the question of granting any relief on the strength of the provisions contained in Section 6Q of the U.P. Industrial Disputes Act providing that where any workmen are retrenched and the employer proposes to take into his employ any person, he shall, in such manner as may be prescribed give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other person, or the benefit contemplated u/s 6P of the U.P. Industrial Disputes Act enforcing the principles of last come first go did not and could not arise.

18. In the aforesaid view of the matter, it is not necessary to enter into the other submissions made by the learned Counsel for the parties as the impugned award is liable to be quashed in view of the fact that the conclusions indicated hereinabove are sufficient for quashing of the impugned award.

19. Considering the facts and circumstances brought on record and my conclusions indicated hereinabove, the Writ Petition No. 72 of 1981 succeeds and the impugned award of the Labour Court is quashed.

20. As a consequence, the Writ Petition No. 2460 of 1981 deserves to be and is hereby dismissed.

21. However, there shall be no order as to costs.