
(2011) 08 AHC CK 0042
In the Allahabad High Court
Case No : Writ - C No. - 18760 of 1999

Divisional Logging Manager

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25F

Citation : (2011) 08 AHC CK 0042

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against the award dated 19.01.1997 given by Presiding Officer, Labour Court, Dehradun in adjudication case No. 195 of 1995. The matter which was referred to the Labour Court was as to whether the action of Petitioners- employers terminating the services its workman Respondent No. 2 Suresh Kumar w.e.f. 08.02.1994 was just and valid or not? The Labour Court held that the termination order dated 08.02.1994 was illegal and directed that the workman should be reinstated w.e.f. 08.02.1994 with full back wages.

3. The Respondent No. 2 was appointed as daily labour chawkidar at Dehradun Logging Division in Pathari Section, which at that time was under the jurisdiction of Divisional Logging Manager, Dehradun. In the administrative reshuffling Pathari Section was brought under the jurisdiction of Divisional Logging Manager, Muzaffar Nagar on 08.04.1992. After about two years i.e. on 08.02.1994 of Divisional Logging Manager, Dehradun wrote a letter to his counter part as Muzaffar Nagar, copy of the said letter is Annexure-1 to the writ petition. It is mentioned in the said letter that on 04.02.1994 they had talked on telephone, in continuance of that a list of 20 employees was being sent with the request that persons at serial No. 7 to 20 should be got joined by Divisional Logging Manager,

Muzaffar Nagar. In the said list name of Respondent No. 2 was at serial No. 7 i.e. at the top of the list of the persons who were required to join at Muzaffar Nagar. However, Respondent No. 2 was not permitted to join (even though Petitioner contended that Respondent No. 2 himself did not report on duty, however, the assertion was wrong and Labour Court has rightly held it to be wrong). The employers also contended that only 9 workmen reported on duty.

4. In para 8 of the writ petition, it is mentioned that on 19.06.1995 Dehradun Logging Division retrenched 55 employees including Respondent No. 2, copy of the retrenchment order is Annexure-2 to the writ petition and at the bottom of the said order it was mentioned that the employees must receive the retrenchment compensation and one months pay in lieu of notice. In Annexure-2 it was mentioned that retrenchment would be effective from 26.06.1995. This retrenchment order dated 19.06.1995 completely disproves the assertion of the employer that the workman Respondent No. 2 had effectively been transferred to Muzaffar Nagar Division and had not reported on duty there. If it had been so then there would not have been any occasion for the Dehradun Division to retrench the services of Respondent No. 2.

5. The Labour Court in the impugned award held that a letter of the Divisional Logging Manager, Muzaffar Nagar dated 11.02.1994 was there indicating that they had absorbed 9 workmen and it was not possible for them to absorb the other 11 workmen. From this, the Labour Court rightly inferred that Respondent No. 2 was not permitted to join by the Muzaffar Nagar Division as in the letter dated 11.02.1994 it had been mentioned that it was not possible for them to take more than 9 persons in employment. Accordingly, Labour Court held that effective date of the termination was 08.02.1994.

6. It is also mentioned in the impugned award that two closed envelopes were produced before the Labour Court which were opened, one envelope contained the retrenchment notice dated 19.06.1995 and the other a cheque of one months notice pay and retrenchment compensation (total Rs. 5388/-). The envelopes contained the endorsement of the postman that the addressee refused to accept the envelopes.

7. Labour Court, further held that the cause of action arose at Dehradun and at the top of the award where names of the parties are mentioned, the employers are shown to be Divisional Logging Manager, Dehradun. However, ultimate direction was issued to Divisional Logging, Muzaffar Nagar which is Petitioner No. 1 in this writ petition. The Labour Court, further held that both the Divisions were under same central command. It is also mentioned that some similarly situate employees who were junior to Respondent No. 2 were taken in service by Muzaffar Nagar Division through letter/order dated 11.02.1994.

8. It is mentioned that retrenchment was due to reduction of work.

9. In this writ petition on the date on which arguments were heard and judgment was reserved a statement was made that under interim order passed in this writ

petition directing compliance of provisions of Section 17-B of the Industrial Disputes Act, Respondent No. 2 was being paid Rs. 1556/- per month without any work.

10. The Labour Court in its award at one place held that when Muzaffar Nagar Division refused to take back Respondent No. 2 in service, Respondent No. 2 remained employee of the Dehradun Division hence services stood terminated on 08.02.1994.

11. In my opinion, even if, it is held that technically Labour Court was correct still the position is that due to reduction in work, several employees who were daily wage workers including Respondent No. 2 were retrenched.

12. The Supreme Court in several authorities some of which are mentioned below has held that if the only defect in the termination order is non payment of retrenchment compensation as required by Section 25F of Industrial Dispute Act (or Section 6 N of U.P.I.D. Act) then it is not always necessary to direct reinstatement with full back wages and that in such situation more often than not proper relief may be to award consolidated damages/compensation particularly when the employer is Government or Governmental agency and relevant rules have not been followed before appointment.

Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others,

Haryana State Electronics Development Corporation Ltd. Vs. Mamni, Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute,

Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another,

In Senior Superintendent, Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and others AIR 2010 SC 2140 it has been held that if daily wagers had worked for 2 or 3 years and their services were terminated without payment of retrenchment compensation then consolidated damages should be awarded to them (Rs. 40,000/- to each of the workman was awarded in the said case). It has also been held that daily wager does not hold a post and can not be equated with permanent employee. This view has been reiterated in Incharge Officer v. Shankar Shetty 2010 (9) JT 262.

Under interim order Respondent No. 2 must have received about Rs. two lacs without any work. The direction of the Labour Court to the Muzaffar Nagar Division was also not correct.

13. Accordingly, in my opinion, interest of law and justice will best be served by directing payment of an additional amount of Rs. 50,000/- apart from the amount which the workman has already received under interim order passed in this writ petition. The total amount will be adequate compensation/damages in lieu of reinstatement.

14. Writ petition is accordingly allowed in part. Impugned award is set aside and substituted by a direction to the Petitioner to pay Rs. 50,000/- to Respondent No.

2 in addition to the amount already received by the workman under interim order. This amount of Rs. 50,000/- shall be paid through draft or deposited before the Labour Court for immediate payment to Respondent No. 2 within two months failing which 2% per month interest shall also be payable thereupon since after two months till actual payment/deposit/ realization.