
(2009) 05 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15620 of 2008

Dushyant Raj and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25H

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(z)

Citation : (2009) 122 FLR 121

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.K. Singh and A.K. Gupta, for the Appellant; Satish Mandhyan, Kamleshwar Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

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

The petitioners have prayed for quashing the impugned termination order dated 16.12.2005, appended as Annexures-7, 7-A, 7-B, 7-C and 7-D to the writ petition and the advertisement dated 25.8.2007, appended as Annexure-1 to the writ petition.

2. It has also been prayed that the respondents may be restrained not to interfere in any manner, in the peaceful functioning of the petitioners on their respective posts and to pay their salary regularly month to month.

Petitioner Nos. 3 and 4 were appointed as Mandi Assistant as Class IV employees in respondent Krishi Utpadan Mandi Samiti on 4.6.1996 by the Secretary, Chhibramau, Kannauj and Rath, District Hamirpur, petitioner Nos. 1 and 2 were appointed as Peon Class IV employees in respondent Krishi Utpadan Mandi Parishad at Basti and Balrampur respectively on 21.6.1996 by the Deputy Director (Admn.) and Petitioner No. 5 was appointed on the post of Electrician on 19.6.2003 in Rajya Krishi Utpadan Mandi Parishad, Vidyut Yantriki Sangam

palace 10th Floor, Allahabad.

3. The contention of learned Counsel for the petitioners is that the services petitioners have been terminated vide order dated 16.12.2005 by the Secretary, Rajya Krishi Utpadan Mandi Parishad, Lucknow without affording any opportunity of hearing to them only on the ground of Neeraj Awasthi's case.

4. He also submit that since all the employees of the Mandi Samiti and Mandi Parishad are to be taken into account as simple category, hence the provisions of section 25-H of the Industrial Disputes Act, 1947 are applicable in the present case and that the case of the petitioners is covered by the judgment rendered in Civil Misc. Writ petition No. 7672 of 2006, C.M. Pandey v. State of U.P. Secretary, Agriculture Department, U.P. Shashan, Lucknow and others, thus they are entitled to reinstatement in service forthwith by treating them to be continued in service with all consequential benefits of services as admissible to post held by them and are also entitled for payment of their salary regularly month to month as and when it falls due.

5. Learned Standing Counsel for the respondents submits that the services of the petitioners have been terminated by the impugned order dated 16.12.2005 in view of the judgment of the Apex Court rendered in State of U.P. Vs. Neeraj Awasthi and Others, , and there is no illegality or infirmity in it and that the petitioners being Class IV employees come within the meaning of workmen as defined u/s 2(z) of the U.P. Industrial Disputes Act, 1947. Therefore, the petitioners have an alternative and efficacious remedy against the impugned order before the Labour Court, which is not denied by the learned Counsel for the petitioners.

6. The factual controversy whether the services of the petitioners were terminated legally or not can only be adjudicated upon and decided by the Labour Court on basis of oral and documentary evidence which may be adduced before it upon a reference which is not feasible in writ jurisdiction under Article 226 of the Constitution by the High Court.

7. Admittedly, the Petitioners are workmen as defined in section 2(z) of the U.P. Industrial Disputes Act, 1947 and it has not been denied by the Counsel for the petitioners that they have an alternative and efficacious remedy under the U.P. Industrial Disputes Act, 1947.

8. The Apex Court in Hindustan Steel Works Construction Ltd., and another v. Hindustan Steel Works Construction Ltd., Employees Union 2005 (106) FLR 998 (SC) ., and U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, has held that where the petitioner has an alternative and efficacious remedy the writ petition should not be entertained.

In Chandrania Singh v. Managing Director, U.P. Co-operative Union, Lucknow and others 1991 (63) FLR 478 (Alld.-FB)., the Full Bench of this Court has held that, where alternate remedy is available, the writ would not be maintainable.

9. For the aforesaid reasons this petition is dismissed on the ground of availability of alternative remedy.

No order as to costs.