

(2002) 09 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 33238 of 1990

Ghanshyam

APPELLANT

Vs

Om Singh Deshwal, Managing Director, U.P. Bundelkhand
Vikas Nigam Ltd. and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 25F, 6N

Citation : (2002) 5 AWC 3868

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : V.M. Sahai and M.M. Sahai, for the Appellant; Amresh Singh and A.P. Singh, for the Respondent

Judgement

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

2. The brief facts of the case are that the Petitioner was initially appointed as peon on daily wages basis in Uttar Pradesh Bundelkhand Vikas Nigam Limited, Jhansi (hereinafter called as the Nigam) on 1.10.1980. He was given temporary appointment as peon w.e.f. 16.9.1988.

3. The Petitioner has challenged the validity and correctness of the aforesaid order of termination by means of this writ petition and has prayed for a direction to the Respondents to regularize him in services with all benefits and pay his salary w.e.f. 6.9.1990 on the ground that he was regularly working on the post of peon from 1.10.1980.

4. Most of the Units of the Nigam were, in the mean time, closed, therefore, it was decided as a matter of policy by the State Government that some persons be retrenched to affect the economy. The Petitioner being the junior most person in his category was terminated from service on 6.9.1990 by the Managing Director of the Nigam by giving three months' notice along with a cheque for Rs.

3,020.40 representing 3 months" salary which was returned without delivery by the postal department.

5. In the counter-affidavit it has been stated that since the work of the Petitioner was not found satisfactory, therefore, his services were terminated. Thereafter, the Petitioner made a request and assured the authority concerned that he would improve his work then he was appointed afresh on probation. When he did not improve his work, his services were terminated during the probation period. He moved a representation before Respondent No. 3 stating he has not been permitted to join his duties and is not being paid salary. He alleges that his services cannot be terminated without rhyme or reason. He has also alleged that he has worked for more than 240 days in a calendar year and as such, his services cannot be terminated arbitrarily without complying with the provisions of Section 25F of the Industrial Disputes Act and therefore, the termination is illegal. It is further alleged that it was the statutory duty of the Respondent to pay his salary.

6. In the mean time, Bundelkhand Vikas Limited was closed down by the Government. An amendment application was moved by the Petitioner which was allowed by this Court vide order dated 11.12.1996. The Petitioner has stated that the State Government has issued a G.O. No. 3829/54-2.92 dated 11.11.1992 closing down Bundelkhand Vikas Nigam Limited and submitted that since the name of other employees has been sent by the Respondent for absorption in Government or Public Corporation as such, the Petitioner is also entitled for absorption.

7. At the time of hearing it was brought to the notice of this Court that the Petitioner has been absorbed in a Government Corporation as such, the dispute is now limited only to the question of relief from the date of termination of the service of the Petitioner to the date of his absorption.

8. A similar controversy was decided by a Division Bench of this Court presided over by the Hon"ble the Chief Justice in Meerut Mandal Vikas Nigam v. Ambrish Kumar and Ors.. The case of the Meerut Mandal Vikas Nigam was that it had closed down vide order dated 2nd November, 1992 with effect from 30th November, 1992, whereas the workmen were reinstated by the labour court thereafter holding that the termination was illegal. Aggrieved the Nigam filed writ petition in this Court which was decided holding that no benefits could be granted to the workmen as the Nigam was closed down and the aggrieved party may approach the Commissioner who was holding the charge of the Managing Director of Nigam for redressal of their grievance. On the representation of the Petitioner the Commissioner held that the workmen were not entitled to any relief, as they had not worked in the Nigam. The workmen may approach the Payment of Wages Authority who issued the recovery certificate. In the mean time, they approached this Court by filing a writ petition. This Court had issued a direction on the writ application of the workmen that the Payment of Wages Authority may pass an appropriate order regarding payment of wages. Copy of

the writ application was not given to the learned Counsel for the Respondents and the aforesaid order was passed without hearing the Respondents, as such, they filed Special Appeal No. 169 of 1999 in which following order was passed:

"This special appeal is directed against the order dated 4.3.1998 passed by the learned single Judge whereby the learned single Judge issued a writ in the nature of mandamus commanding the District Magistrate, Meerut to execute the award within the shortest possible time i.e., within a period of six weeks.

The contention of the Appellant is that since the Corporation was closed down vide order dated 2nd November, 1992 with effect from 30th November, 1992, the Commissioner of the Division was appointed to discharge the additional functions of the Corporation as Managing Director and after closure of the Meerut Mandal Vikas Nigam, the writ Petitioner, Respondent herein cannot have any legal right to realize his claim on the basis of the award and to enforce the same by way of recovery certificate. It appears to us that an award has been passed in favour of the writ Petitioner-Respondent No. 1 herein and he has to be reinstated in service. The said award was challenged in Writ Petition No. 35889 of 1991, which was dismissed as infructuous because the Corporation was closed down. In that view of the matter the award still remains on record. Considering all the aspects of the matter we are of the view that the interest of justice shall be best served if the writ Petitioner-Respondent No. 1, workman is deemed to have been declared in service up to the date of closure of the Corporation, i.e., 30th November, 1992 and all amounts due and payable to the writ Petitioner as workman shall be paid to the writ Petitioner-Respondent No. 1 herein by the Commissioner of the Division and he shall also be entitled for the same benefits which have been provided to other workman after the closure and the Commissioner of the Division, who is now also discharging the function of the Corporation as Managing Director, shall ensure that the payment and all the benefits as directed above are made available to the writ Petitioner-Respondent as early as possible, preferably within two months from the date of communication of this order.

9. Closure is not retrenchment and Section 6N of the U.P. Industrial Disputes Act will not apply if less than 300 workmen were employed. It appears from the record that the compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act was not made by the Respondents. In absence of evidence to show that Section 6N of the U.P. Industrial Disputes Act applies, it would not be proper in the facts and circumstances of this case as Nigam closed down 10 years back to relegate the matter to the labour court for adjudication particularly when the Petitioner has already been absorbed in service.

10. In *Tej Narain Mishra v. State of U.P. and Ors.* 1985 UPLBEC 1307, it has been held that this Court has inherent power under Article 226 of the Constitution of India to mould the relief suitably.

11. In *U.P. Chalchitra Nigam Ltd. and Another Vs. State of U.P. and Others*, , a reference was made to the decisions of the Apex Court in *Workers of Rohtas*

Industries Ltd. Vs. Rohtas Industries Ltd., Olga Tellis v. Bombay Municipal Corporation AIR 1987 SC 180 and G. Govinda Rajulu Vs. Andhra Pradesh State Construction Corporation Limited and Another, , it was held as under:

"the employees whose services have been terminated or who have been retrenched by means of the order impugned in this petition shall be absorbed by the opposite parties against suitable alternative posts or vacancies in terms of the resolution dated April 10, 1989, adopted by the Nigam and the Government order dated April 5, 1990, issued to all the District Magistrates for the absorption of the employees which shall be done by the opposite parties within three months from the date of communication to them of a certified copy of this judgment. The pay already paid to the employees till date under the interim order of this Court or otherwise shall not be recovered from them.

The State Government shall make a reference of the dispute, if any, surviving after absorption, relating to the retrenchment of the employees to the labour/ Industrial Tribunal u/s 10 of the Industrial Disputes Act within a month from the date of absorption.

12. In this view of the matter the ends of justice would be served if the Chairman, Uttar Pradesh Bundel-khand Vikas Nigam Limited, in liquidation is directed to pay 50% of the wages of the Petitioner from the date of termination of service till the date of his absorption in other departments.

13. With the aforesaid directions, the petition is disposed of.

14. No order as to costs.