
(1991) 09 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2765 of 1986

Hardwari Lal

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 09-09-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(S), 25F, 6N

Citation : (1991) 2 AWC 111

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : S.P. Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—Petitioner was appointed as Road-Roller Second (Spare) Driver in Prantiya Khand, Public Works Department, Shahjahanpur and his name was enlisted in the Muster roll in due course of time. It transpires from the facts on record that by communication No. 2046 dated 16-6-1982, the Executive Engineer Prantiva Khand, Public Works Department Shahjahanpur, (Respondent No. 4) recommended the Petitioner to the Superintending Engineer III, P.W.D. Bareilly (Respondent No. 3) for treating him as work-charge employee. This letter was followed by another letter from Respondent No. 4 dated 5-3-1984 to the Respondent No. 3, but the name of the Petitioner was not included in the list of work-charge employees. The averments made in, the petition are to the effect that the Petitioner was not accepted as work-charge employee whilst the employees junior to him were so enlisted. The names of such juniors to the Petitioner are mentioned in paragraph 6 of -the writ petition. The Petitioner claims himself to be in continuous service ever since his appointment in Jan. 1981 and abruptly, on 16-7-1985, the Respondent No. 5 orally directed the Petitioner to make over the Roller in the charge of the Petitioner, to one Sri Mahfooz Ali Khan, a Mixer operator who was junior to the Petitioner. The

Petitioner remonstrated and put forth his grievances before the Respondent No. 4 but he could elicit no response as to redressal of his grievances. It is asserted that he was neither served with any charge-sheet nor his services were terminated in accordance with law and yet the Respondents disallowed him to work after 15-7-1985 and he has not been paid his salary/wages since May 1985. The Petitioner, it is so alleged, had all along been approaching the authorities for redressal of his grievances but he had so far drawn a blank. The present petition has been filed for a writ of certiorari quashing the order of termination and commanding the Respondents to treat the Petitioner in service and further extend him all the consequential benefits.

2. In the counter affidavit, it has been averred in paragraph 11 that in consequence of some defect in the gear box of the Road Roller, the Petitioner deserted the same and disappeared without any intimation to the department, With fuel and lubricants and did not turn up again. It is further averred in paragraphs 13 and 22 of the counter affidavit that there was no question of giving anything in writing to the Petitioner by reason of the fact that he had voluntarily absented from duty.

3. I have heard the learned standing counsel for the Petitioner and also the learned Standing Counsel. On the admitted facts, the Petitioner had put in 240 day of continuous service in 12 calendar months immediately preceding the date when he is said to have absented himself from duty. No written order of termination of the Petitioner's services was passed by the Respondents. According to Section 2(S) of U.P. Industrial Dispute Act, 1947, termination of services of workman brought about for any reason whatsoever, would be retrenchment except where the case falls within any of the excepted categories enumerated in the section. On the facts and circumstances of the present case, exception is not made out and it goes to prove the termination of the Petitioner as retrenchment and Respondents were bound to follow the course prescribed by Section 6-N of U.P. Industrial Dispute Act, 1947. That course has admittedly not been followed. Under the circumstances, the Petitioner shall be deemed to have been illegally retrenched without following the procedure prescribed under law. The view that I am taking in this case, is buttressed by the view taken by me in Civil Misc. Writ petition No. 2100 of 1980 Afsar Main v. Labour Court Bareilly and others decided on 11-7-91 and a recent decision of Hon. Supreme Court in Punjab Land Development Corporation Limited v. The Presiding Officer, Labour Court JT 1990 (2) SC 489. In the case of Afsar Main (supra) the services of the employee were terminated on the basis of the standing order which provided for deemed termination if the employee fails to turn up to join his duties after the expiry of the leave or extended leave as the case may be. I have taken the view in that case that retrenchment as defined in Section 2(oo) of the Central Industrial Dispute Act, 1947 or Section 2(S) of U.P. Industrial Dispute Act, 1947, is wide enough to include termination on any ground whatsoever except those expressly excluded.

4. In Land Development Case (supra), in one of the Civil appeals, it being Civil Appeal No. 1898 of 1982 with which the Hon. Supreme Court was concerned in the said case, the employee stopped attending duties from 9-8-1975 and he left his service on his own accord. The labour court by its award dated 16-9-80 held that the termination amounted to retrenchment and was illegal for non-compliance with the provisions of Section 25-F of the Act and accordingly, the employee was held entitled to reinstatement with full back wages. The award of the labour court was unsuccessfully challenged before the High Court and finally before the Supreme Court. Hon. Supreme Court considered the question in extenso and while discussing the scope and ambit of retrenchment as defined in Section 2(oo) of the Central Act, observed as under:

Analysing the definition of retrenchment in Section 2(oo) we find that termination by the employer of the services of a workman would not otherwise have covered the cases excluded in (a) and (b) namely voluntary retirement, and retirement on reaching the stipulated age of retirement. There would be no volitional element of the employer. Their express exclusion implies that those would otherwise have been included. Again if those cases were to be included, termination on abandonment of services, or on efflux of time and on failure to qualify, although only consequential or resultant, shall be included as those have not been excluded.

5. In view of the above decision of Hon. Supreme Court, it is abundantly clear that the termination of services of the Petitioner even on the ground of his alleged abandonment of service would be tantamount to retrenchment within the meaning of Section 2(S) of U.P. Industrial Dispute Act and the Respondents cannot escape the liability of non-observance of the provisions of Section 6-N of the Act.

6. In the result, the petition succeeds and is allowed. The Respondents are directed to treat the Petitioner in continuous service extending all consequential benefits flowing from it.