

(1993) 12 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 45688 of 1993

Jagan Singh

APPELLANT

Vs

Canara Bank and Another

RESPONDENT

Date of Decision : 23-12-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (1994) 68 FLR 648 : (1994) 2 LLJ 1184 : (1994) 1 UPLBEC 399

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : A.N. Srivastava and P.K. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Heard learned counsel for the petitioner. The facts stated in the writ petition are that the petitioner was appointed as daily wages Cooliman on 7th July, 1992. He continued upto 13th August, 1993, worked for more than 240 days and thereafter respondents stopped taking work from petitioner. Aggrieved by the action of the respondents petitioner filed a writ petition in this Court on 17th August, 1993 in which order to the following effect was passed:

"Petitioner is directed to serve respondents within two weeks and they may file counter-affidavit within three weeks thereafter.

List on September 29, 1993 before the appropriate court. If the petitioner has completed 240 days of service, he shall be continued in service. However, it will be open to the respondents to terminate the services after complying with Section 25F of the Industrial Disputes Act."

From the perusal of the aforesaid order it is clear that this court left it open to the respondents to terminate the services after complying with the provisions of Section 25F of the Industrial Disputes Act (equivalent to Section 6-N of the U.P. Industrial Disputes Act, 1947). The respondents by order dated 1st October,

1993 have retrenched the petitioner from service. They have stated reasons in the order that since permanent incumbent has joined the post the services of the petitioner are no longer required. In paragraph No. 2 of the writ petition, petitioner has stated that he was appointed as daily wager on transfer of one Har Lal to another branch of the banking district Rampur. From the averments made in paragraph No. 2 of the writ petition it is clear that the appointment of the petitioner was on a short term vacancy. The order dated 1st October, 1993 further discloses that the petitioner has been paid compensation and also the amount for the salary of one month in view of the notice. In my opinion the order does not suffer from any error of law.

2. Learned counsel for the petitioner however submitted that u/s 6-N (c) of U.P. Industrial Disputes Act, 1947, here-in-after referred to as "Act", a notice in the prescribed manner has not been served on the State Government and hence the order of retrenchment is illegal and is liable to be quashed. Learned counsel placing reliance on Rule 42 of U.P. Industrial Disputes Rules, 1957, hereinafter referred to as "Rules", has submitted that the provisions of Section 6-N (c) are mandatory and non-compliance of this provision shall vitiate the order of termination which amounts to retrenchment in the facts and circumstances of the case. Learned counsel for the petitioner has placed reliance on a Division Bench Judgment of this Court in case of Shafqat Ullah Khan v. U.P. State Electricity Board and Ors. 1989 (59) FLR 740 and has submitted that the Division Bench has held that the condition mentioned in Section 6-N is a condition precedent for passing the order of retrenchment.

Reliance has also been placed in cases of Kondisetti Anjaiah Vs. T. Lakshmaiah, , Ashok Kumar Srivastava and Ors. v. State of U.P. 1991 (63) FLR 917 , Govind Singh v. Presiding Officer, Labour Court, U.P. and Ors. 1993 (66) FLR 560 and it has been submitted that the petitioner was entitled to be regularised on the post and cannot be retrenched.

3. I have seriously considered the submissions of the learned counsel for the petitioner and in my opinion, the controversy as to whether non-compliance of Section 6-N (c) of the Act will vitiate the order of retrenchment stands concluded by Honb"le Supreme Court in the case of Bombay Union of Journalists and Others Vs. The State of Bombay and Another, in which Honb"le Supreme Court was considering the provision of Section 25F(c) of Industrial Disputes Act, 1947. which contains the identical provision for giving the order of retrenchment. Learned counsel for the petitioner however tried to distinguish the aforesaid view of Honb"le Supreme Court on the basis of the Rule 80 applicable at Bombay framed by the Maharashtra Government. Learned counsel has also compared Rule 80 applicable in Bombay with Rule 42 of the Rules applicable in the present State.

4. However, in my opinion, Honb"le Supreme Court in pp 356-358 has considered the provision of Section 25F(c) independently and thereafter held that the provision is directory and notice could be even given subsequent to passing of

order of retrenchment. In view of the specific decision of the apex court on the question in hand it is difficult to follow the Division Bench Judgment of this court strongly relied on by the learned counsel for the petitioner. Further it appears that in case in hand before the Division Bench none of the conditions given in Section 6-N of the Act were complied with and in the circumstances the order of termination which amounted to retrenchment was disapproved. No reasons have been recorded in the judgment for treating the conditions contained in clause (c) of Section 6-N of the Act as a condition precedent separately. Learned Judges have mentioned Section 6-N of the Act as a whole. For this reason also it is difficult to follow the judgment. It may also be mentioned here that if provision contained in main section is mandatory or directory according to its context, its nature cannot be changed and effect cannot be taken away by the Rules which are expected to be consistent with the main provision of the Act and are enacted for giving effect to the provisions of the Act as is clear from Section 23 of the Act. Thus the submissions of the learned counsel to distinguish the case decided by Honb''le Supreme Court cannot be accepted. Order of retrenchment cannot vitiate for non-compliance of Section 6-N (c) of the Act.

5. The second submission of the learned counsel is that the petitioner was entitled to be regularised on the post and he cannot be retrenched. The submission is based on the judgment of the learned Single Judge mentioned above. The termination of petitioner from service has also been questioned on the basis of the case reported in D.K. Yadav Vs. J.M.A. Industries Ltd., .

I have seriously considered the submissions of the learned counsel to this aspect of the case also . However it is difficult to apply the ratio of above judgments in the facts and circumstances of the present case. The aforesaid views expressed by this court and Honb''le Supreme Court are on the facts in the aforesaid cases which were altogether different. In the present case petitioner has worked for only one year. He was appointed in a short term vacancy as permanent incumbent had gone on transfer to some other branch. The order of termination has been passed against petitioner as permanent employee has come back to join his post. Honb''le Supreme Court in case of Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, and in case of State of Haryana v. Pyara Singh 1993 1 LU 937 has clearly held that the claim of regularisation cannot be accepted merely after serving one year on ad-hoc or casual basis. The Division Bench of this Court in Case of Zakir Hussain Vs. Engineer-in-Chief, Irrigation Dept. and Others, has also taken the same view. In my opinion, petitioner has failed to make out any case for interference by this court under Article 226 of the Constitution.

6. For the reasons stated above, this writ petition has no force and is, accordingly, rejected.