

(2006) 02 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 19280 of 1995, 45940 of 2003 and 16142 of 2004

Khyali Ram

APPELLANT

Vs

District Magistrate, Chairman Nagar Panchayat, Executive
Officer Nagar Panchyat and State of U.P.

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Citation : (2006) 7 AWC 6712

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.N. Tiwari, P.N. Tripathi and Alpana Dwivedi, for the Appellant; P.K. Dixit, Vivek Saran and Syed Mahmood and S.C., for the Respondent

Final Decision : Dismissed

Judgement

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

2. Since in the above writ petitions common question of law and facts are involved, hence they are being decided by a common judgment.

3. The petitioner was appointed on daily wage as Pump Operator on 16.8.89 for a fixed period of 90 days. The appointment letter of the petitioner has been appended as Annexure-1 to the writ petition which is as under:-

^^Jh [;kyh jke iq=k Jh jke jru

xzke uxykokj {ks=k bdfny A

vkidks voxr djku gS fd vkidh fu;qfDr tydy laLFkku rk? ,oa bdfny bVkok ds vUrZxr iEi gkml pykus gsrq iEi pkyd ds in ij nSfud osru #? 15 @& ?iUnzg ek=k? dh nj ls dh tkrh gS A tks furkUr ek=k 90 @& ?uCcs? fnol ds fy;s gksxh A vki viuh ;ksxnku vk[k;k izLrqr dj "kh?kz dk;Z dky izkjEHk dj nsa A

g? viBuh; v/;{k vij {ks=k xzke fo?bdfny bVkok A**

The petitioner worked on the said post till 11.6.91 when his services were terminated for reason that they were no longer required. He was directed to hand over charge of the post to one Sri Dev Narain Clerk Town Area Ekdil. The termination order dated 11.6.91 is as Under:-

^^bl lfevr dks vc vkidh lsokvksa dh vko";drk ugha gS A vr% vkidh lsok,sa rRdky izHkko ls lekIr dh tkrh gS A vki vius in ls lEcU/kr lHkh pktZ Jh nsoukjk;.k fyfid Vb?;. bdfny dks lksai nsa A

g? vLi"V v/;{k uxj {ks=k lfevr bdfny ?bVkok?

izfrfyfi&Jh nsoukjk;.k fyfid dks bl vk"kr; ls izsf"kr fd og Jh [;kyh jke nS?os? iEi pkYd ls lEiw.kZ pktZ ysdj viuh vk[;k izLrqr djsa A

g? vLi"V v/;{k uxj {ks=k lfevr bdfny ?bVkok?*

4. Aggrieved by his disengagement the petitioner raised an industrial dispute before the Regional Conciliation Officer. As no settlement could be arrived at during the conciliation proceedings. The dispute was referred to Labour Court (I), Kanpur for adjudication where it was registered as Adjudication Case No. 148 of 1993.

5. The case of the workman before the Labour Court was that he was appointed as Pump Attendant in the town area of Batvva on 16.8.89. The respondents used to take work for 13-14 hours per day from the workman and were paying him wages much less than the wages due to him i.e. he was paid Rs. 20/- per day whereas he was entitled to basic salary of Rs. 825/- per month. It is when he raised demand for regularization that the employer became annoyed and his services were terminated without any notice or payment of retrenchment compensation; that even after many efforts he has not been able to get employment and is unemployed since the date of his illegal termination.

6. The case of the employer was that the petitioner was engaged on daily wages on the post of Pump Attendant on 16.8.89 for a fixed period of 90 days and that he had not continuously worked from 16.8.89 to 11.6.91 as claimed by him and as the Government had imposed a ban on the appointment of daily wage employees on 6.12.91 as such the appointment made by the Nagar Panchayat Ekdil, District Etawah was illegal and in violation of the Government Order as such Nagar Panchayat was not liable for payment of salary to the workman.

7. It was also the case of the Nagar Panchayat before the Labour Court that the workman used to work for only 7-8 hours per day and was rightly paid at the rate of Rs. 20/- per day which was the minimum wages at the relevant time and that as the Pump had become defective his services were no longer required. Lastly it was the case of the Nagar Panchayat that the workman had not worked continuously from 16.8.89 to 11.6.91 and being daily wage employee he was not entitled to the pay minimum scale, which is being paid to a regular employee.

8. The Labour Court by the impugned award dated 23.11.94 drew adverse

inference against the employer for not filing the Attendance Register and Payment Register of the concerned workman, which were summoned by the Labour Court. The respondents only filed Payment Register of the months-of May and June, 1990 and the order dated 16.8.89 regarding payment of the petitioner along with the order dated 15.11.89 by which the services of the petitioner were terminated.

9. In spite of the fact that the employers were granted several opportunities but they did not cross-examine the workman who gave his evidence before the Labour Court. The employers also did not give any oral evidence nor proved the documents filed by them. The Labour Court by the impugned award held that in the circumstances, the workman has continuously worked from 16.8.89 to 11.6.91 and his services were illegally terminated without any notice, or payment of retrenchment compensation, which is illegal and unjustified. The workman was granted relief of reinstatement with continuity of service and full back wages etc. Cost of Rs. 200/- was also imposed on the employer.

10. The impugned award was challenged by the Nagar Panchayat Ekdil, District Etawah in Writ Petition No. 19280 of 1995. No interim order was granted to it in the aforesaid writ petition. This writ petition is still pending.

11. In para 6 of the counter affidavit it has been stated that Nagar Panchayat, Ekdil challenged the award in writ petition No. 19280 of 1995 and that the status of the petitioner is disputed as he was a daily wage employee and that this Court is seized of the matter to decide whether the petitioner is entitled to work. It has also been averred in the aforesaid paragraph that the petitioner raised an industrial dispute before the Labour Court concealing the material facts and had obtained order.

12. In para 12 of the counter affidavit it has been stated that the order of regularization is illegal for extraneous consideration and without taking into consideration that the writ petition against the award of the Labour Court is pending and that only the status of the petitioner is to be decided and that since this Court is seized of the matter, the order of regularization can not be passed as the order of the Labour Court is not final and that the G.O. referred in the order dated 5.4.2003 does not say that the workman whose status is disputed and the High Court is seized of the matter, they may also be regularized. It has also been averred in para 12 of the counter affidavit that regularization order dated 5.4.2003 has not been approved by the Nagar Panchayat or the Chairman, as such the writ petition is not maintainable.

13. In pursuance of order dated 22.9.1998 a recovery was issued against the town area Ekdil, Etawah for Rs. 13,980/- to be recovered as arrears of land revenue. Since the petitioner was not absorbed on the post he moved representations before the Chairman, Executive Officer, Nagar Panchayat Ekdil as well as the State Government, which also remained unactioned. Then petitioner filed Civil Misc. Writ Petition No. 15208 of 2000 claiming absorption on the said

post on the ground that he has a right for being regularized/absorbed under the Government Orders dated 7.5.92 and 26.6.1992. This Court by older-dated 6.4.2000 directed the respondents to decide the representation of the petitioner before proceeding to fill-up the vacancy by direct recruitment. It is stated that the petitioner served the copy of the order and judgment dated 6.4.2000 on the respondents.

14. It appears that the services of the petitioner was regularized on the post of Pump Operator in Nagar Panchayat Ekdil in the pay scale of Rs. 2650-00-65-00-3300-00-70-00-4000-00 by the Executive Officer Nagar Panchayat Ekdil, District Etawah vide order dated 5.4.2003. The Regularization order dated 5th April, 2003 is as under:-

^ ^ Jh jkeizdk" k nqcs iEi pkyd ds Isokfuo`Rr fnukad 31&12&2002 ds QyLo#i fjDr gq, in ij fnukad 16&8&89 ls nSfud osru ij dk;Zjr Jh [;kyh jke iEi pkyd dks dk;kZy; fVIi.kh fnukad 4&4&2003 ,oa "kklukns" k la[;k&4530 @ 9&1&92 fnukad 7&5&92 vkSj "kklukns" k la[;k 5839 @ukS&1&92&62 lk @ 92 fnukad 26&6&92 uxj fodkl vuqHkkx&1 ds vuqiky esa uxj ikfydk vf/kfu;e 1916 dh /kkjk&75 esa iznRr "kfDr;ksa dk iz;ksx djrs gq, Jh [;kyh jke dks osrueku 2650&00&3300&00&70&4000&00 esa fofu;fer fd;k tkrk gS A

g? viBuh; 5&4&2003 vf/k"kkIh vf/kdkjh uxj iapk;r bdfny bVkok A**

15. However, the Chairman, Nagar Panchayat Ekdil did not pay salary to the petitioner from the month of April, 2003 to May, 2003, though the salary was sanctioned by the Executive Officer.

16. The counsel for the petitioner contends that despite order of this Court respondent No. 2 vide order dated 20.12.2003 restrained the petitioner from signing on the Attendance Register. It is vehemently urged that ante-dated letter was prepared on 12.3.2003 under the signatures of respondent No. 3 in which it was stated that the order of regularization of the petitioner dated 5.4.2003 is not justified, as such regularization and arrears were with-held by the impugned order dated 6.4.2004.

17. It is stated that the petitioner, in the circumstances, moved a representation dated 17.6.2003 to District Magistrate, Etawah inter alia, requesting for payment of his arrears of salary which had not been paid to him for the aforesaid period of April, 2003 to May, 2003. As the representation of the petitioner was not considered by the District Magistrate and had remained unacted compelling the petitioner to file writ petition No. 45940 of 2003. The petitioner in that writ petition prayed for a writ of mandamus commanding respondent No. 1, the District Magistrate, Etawah to consider his representation dated 17.6.2003 and for a direction to the Chairman, Nagar Panchayat, Ekdil, District Etawah to pay his arrears of salary from the months of April, 2003 to May, 2003. The writ petition is pending in which this Court has passed the following interim order on 15.10.2003.

Learned standing counsel appears for respondents 1 and 3. Issue notice to respondents 2 and 3. Steps within a week.

Respondents are granted four weeks" time to file counter affidavit. Petitioner will have two weeks thereafter to file rejoinder affidavit. List in is Week of December, 2003.

It is contended that petitioner was appointed as Pump Operator in 1989. His services have been regularized in April, 2003 but he has been paid his regular salary.

As an interim measure, it is provided that the respondents shall pay his salary within four weeks or show cause by filing counter affidavit.

Sd. Hon. Sunil Ambwani, J.

18. It is further urged that from the record of W.P. No. 16142 of 2004 it is evident that after the award of the Labour Court, the petitioner claimed his arrears of salary etc., which had not been released. He again approached the Labour Court. By order dated 22.9.98 the Presiding Officer of the Labour Court directed the Nagar Panchayat Ekdil for payment of the salary of the petitioner.

19. The counsel for the respondents submits that the appointment of the petitioner was illegal as there was a ban imposed, by the government on the appointment pn 17.11.89 and also that the order of approval dated 5.4.2003 has not been approved by the Chairman. It is further staled that Writ Petition No. 16142 of 2004 has been filed for quashing the impugned orders dated 20.12.2003 and 12.2.2003 and 6.4.2004 passed by respondent Nos. 2 and 3. It is next submitted that the counter affidavits of both the writ petitions i.e. writ petition No. 16142 of 2004 and writ petition No. 45940 of 2003 have been filed but no rejoinder affidavit has been filed. In writ petition No. 45940 of 2003 the fact of the pendency of the writ petition No. 192230 of 1995 was concealed therefore, on this ground also the writ petition is liable to be rejected as the petitioner has not come before this Court and has obtained the order dated 15.10.2003 in writ petition No. 45940 of 2003 which is a serious matter.

20. It is also submitted by the counsel for the respondents that since ; the writ petition against the award of the Labour Court is pending, therefore, during the pendency of that writ petition the petitioner can not be regularized as the legality of his appointment has not been decided by this Court and that the petitioner has not come with clean hands as he has claimed to have continuously worked as daily wager since 16.8.89 whereas the order of appointment was only for 90 days. It is next submitted that in the circumstances, the petitioner is not entitled for any relief and the writ petition is liable to be dismissed on this ground also.

CONCLUSIONS:

21. It appears from the impugned award that the employer had not filed the documents summoned by the workman and has not cross-examined the

workman. The evidence of the workman remained un rebutted that he had continuously worked in the respondents Nagar Panchayat Ekdil w.e.f 16.8.89 to 11.6.91 without break in service. The Nagar Panchayat Ekdil neither gave any evidence nor proved any documents in support of its case. In the circumstances, the findings of the Labour Court that the workman had continuously worked from 16.8.89 to 11.6.91 cannot be faulted with. The Labour Court has given categorical findings of facts that the termination of the services of the workman was illegal and unjustified for non-compliance of the provisions of Retrenchment of Compensation Act. Having remained unemployment the workman was rightly granted relief of reinstatement service with full back wages.

22. It is also evident from the record that the workman was regularized in service. No material whatsoever has been brought on record by the Nagar Panchayat Ekdil from which it could be established that the order of regularization of the petitioner was passed for some ulterior motive, though the Nagar Panchayat Ekdil was not granted any interim order in Writ Petition No. 19280 of 1995, Nagar Panchayat Ekdil, District Etawah v. the Presiding Officer, Labour court, Kanpur filed against the award of the Labour Court dated 23.11.94. It was contended by the Nagar Panchayat that the workman could not have been regularized because of the pendency of the writ petition and that the, benefits of regularization in service to the petitioner would be available only after the decision of the writ petition.

23. For the reasons stated above, the writ petitions are dismissed. No order as to cost.