

(2004) 10 UK CK 0009
In the Uttarakhand High Court
Case No : C.M.W.P. No. 5235 of 2001 (M/S)

Kichha Sugar Company Ltd.

APPELLANT

Vs

Tara Chand Mahtoliya and Another

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 21, 6N

Citation : (2004) 4 AWC 3499 : (2005) 2 UC 803 : (2004) 2 UD 614

Hon'ble Judges : P.C. Pant, J

Bench : Single Bench

Advocate : Tanveer Alam Khan, for the Appellant; Narayan Dutt, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pant, J.—By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought quashing of the impugned order/award dated 24.9.1992 passed in Adjudication Case No. 97 of 1990 by the Labour Court, Haldwani.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioner is a Sugar Company owned and controlled by the U. P. State Sugar Corporation, Lucknow. It employed permanent as well as seasonal employees for running the business of sugar factory. Out of the seasonal workmen, some are engaged on daily wages and others as casual workmen to meet the emergent situation. The respondent No. 1, Tara Dutt Mahtoliya was employed on daily wages during the season 1982-83 till 1985-86. While he was working as a Watchman in the intervening night of 25/26 of October 1987, a theft took place in the residential colony whereafter the services of the respondent No. 1 were terminated on 27.10.1987. The termination was made due to the negligence in duty on the part of respondent No. 1. It appears that respondent No. 1 raised the industrial dispute before the Labour Court, Haldwani (respondent No. 2) who gave its award dated 24.9.1992 (copy Annexure-1 to the writ petition) whereby

respondent No. 1 was directed to be reinstated in service with back wages. It is alleged in the writ petition that respondent No. 1 was not a regular employee of the petitioner-company. The petitioner-company has filed copy of the statement (copy Annexure-2 to the writ petition) of respondent No. 1 regarding the incident of theft and hours of his duties. Although the award given by the respondent No. 2 is challenged, it is stated in the writ petition that the respondent No. 1 was re-employed in pursuance of the impugned award vide order dated 9.10.1992 (copy Annexure-3 to the writ petition). It is alleged in the writ petition that the petitioner-company is not liable to make payment of back wages for the period 27.10.1987 to 8.10.1992 for which the respondent No. 1 had done no work with the petitioner-company.

3. A counter-affidavit has been filed on behalf of the respondent No. 1 in which it has been stated that initially answering respondent was appointed in the year 1978 and worked upto 27.10.1987 when his services were terminated on an allegedly wrong charge. In the counter-affidavit it is denied if the answering respondent was at all guilty of any misconduct regarding the alleged theft which took place in the residential colony. According to the respondent No. 1, he is entitled to all full back wages from 27.10.1987 to 8.10.1992.

4. I heard learned counsel for the parties and perused the affidavit, counter-affidavit, rejoinder-affidavit filed by the parties along with the annexures annexed thereto.

5. The short question for consideration before this Court is whether, the impugned order/award dated 24.9.1992, passed in Adjudication Case No. 97 of 1990 passed by respondent No. 2, Labour Court, Haldwani, is illegal and, is the respondent No. 1 not entitled to reinstatement in service with full back wages as awarded by the respondent No. 2?

6. Admittedly, respondent No. 1 was employed with the petitioner sugar factory on daily wages. It is also admitted that on 27.10.1987 his services were dispensed with after an incident of theft took place in the intervening night of 25/26 of October 1987 on which date he worked as a Watchman. It is also not disputed that no departmental enquiry took place regarding negligence on the part of respondent No. 1 and his services were dispensed with on the very next day of the alleged incident of theft. As such no evidence was recorded in any enquiry held by the petitioner- company. Statement of witnesses recorded by the Labour Court (respondent No. 2) are discussed by said authority. The learned Labour Court in paragraph 3 of its impugned report observes regarding the statement of witness, Sri B. D. Pant, Personnel Officer as under :

^^ftjg esa xokg us ;g Lohdkj fd;k gS fd pksjh dh ?kVuk ds ckjs esa ;g fuf"kpr :i ls irk ugha py ldk fd pksjh dh ?kVuk oknh Jfed dh f"k?V esa gqbZ Fkh ;k mlds cknA ftjg esa mUgksaus ;g Lohdkj fd;k fd ;g dguk lgh gS fd pksjh dk fuf"pr le; irk u yxus ds dkj.k lsok;kstdksa us nksuksa Jfedksa dks lUnsg ds vk/kkj ij dk;Z ls gVk fn;k FkkA ftjg esa mUgksaus ;g Hkh Lohdkj fd;k fd tkap vf/kdkjh }kjk tks

c;ku ntZ fd;s x;s Fks og oknh Jfed dks M;wVh ij u fy;s tkus ds ckn ntZ fd;s x;s FksA**

Learned Labour Court has also found after recording the evidence that the respondent No. 1, as workman, has completed 240 days in a year and before termination of his services provisions of Section 6N of the U. P. Industrial Disputes Act, - 1947 were not complied with.

7. Sri T. A. Khan, learned counsel for the petitioner-company drew my attention to the Standing Orders relating to the Sugar Industries in Uttar Pradesh and referred to Clause V of para 1 of Termination of Employment, which reads as under :

"5. Unless he has qualified for getting notice u/s 6N of the U. P. Industrial Disputes Act, 1947, the employment of probationer, substitute, temporary or apprentice workman may be terminated by the Manager without any notice or any payment in lieu of notice."

However, this Court finds that the case of respondent No. 1 is covered u/s 6N of the U. P. Industrial Disputes Act, 1947 as there is a categorical finding in the impugned award that the respondent No. 1 has worked for more than 240 days in a calendar year, As such in the opinion of this Court, the aforesaid Standing Order does not help the petitioner-company.

8. My attention was also drawn on behalf of the petitioner-company to the principle of law laid down in Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, and Life Insurance Corporation of India v. Raghvendra Seshagtrt Rao Kulkarni 1997 (77) FLR 782 and it is argued that the respondent No. 1, being a daily wager has no right to any post and his services are liable, to be terminated at any time. I am unable to accept the submissions of the learned counsel for the reason that In the case of Himanshu Kumar (supra) the concerned establishment was held not to be an Industry while in the present case it cannot be said if the Kisan Sugar Factory is not an Industry. Similarly, the principles of law laid down In Life Insurance Corporation of India, case (supra) do not help the petitioner-company for the reason that said case pertains, to. different facts and circumstances relating to termination of a probationer during the period of probation while it Is not the case here,

9. As against this, Mr. Narayan Dutt, learned counsel for respondent No. 1 drew my attention to the principle of law laid down In E. Etumalai v. Management of Simplex Concrete Piles (India) Ltd., Madras and Anr. 1970 Lab LJ 1460 : 3 CN 323 in which it has been held that casual workman or labourer is covered under the definition of "Workman" in view of Section 2(s) of Industrial Disputes Act. My attention was also drawn on behalf of respondent No. 1 to the principle of law laid down in U. P. Drugs & Pharmaceuticals Company Ltd. v. Ramanuj Yadav and Ors. 2003 (4) AWC 3328 (SC) : 2004 (1) SCC 53 : (2003) 8 SCO 334 In which it has been held that if a workman has worked for more than 240 days in a year, before retrenchment of such an employee, compliance of Section 6N read with

Section 2 (g) of the U. P. Industrial Disputes Act, 1947 Is necessary.

10. However, in view of principle of law laid down in M.P. State Electricity Board Vs. Smt. Jarina Bee, , Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, , it is settled that payment of full back wages is not a natural consequence on setting aside order of removal of service. In the opinion of this Court in the facts and circumstances of the case, there is no justification of awarding full back wages to, the respondent No. 1 (a daily wager), for the period he had not worked. Direction of payment, of only 50% of wages for the period prior to reinstatement would have met ends of justice.

11. In view of the above discussion, facts and circumstances, this Court is of the opinion that there is no illegality in the Impugned order and award dated 24.9.1992 passed by the Labour Court, HaldwanI except to the extent of direction to pay full back wages. Therefore the writ petition is dismissed with regard to reinstatement of the respondent No. 1. However, the direction to pay full back wages is set aside and only 50% of back wages are ordered to be "paid by the petitioner Instead of full back wages, from the date of termination to the date of reinstatement No order as to cost.