
(2003) 02 AHC CK 0042
In the Allahabad High Court
Case No : C.M.W.P. No. 5284 of 1998

Kisan Sahkari Chini Mills Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2003) 2 AWC 1312 : (2003) 97 FLR 202 : (2003) 2 LLJ 793 : (2004) 3 UPLBEC 2554 : (2003) 1 UPLBEC 890

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Ajay Kumar Misra and Ajit Kumar Singh, for the Appellant; P.C. Jhingan, Kailash Nath (in person) Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—By means of the instant petition, the employer, i.e., Kisan Sahkari Chini Mills Ltd., Ghosi, Mau has canvassed the validity of the impugned award dated 30.1.1997 which was published on 1.10.1997. From a perusal of the impugned order, the quintessence of what has been held by the labour court is that the workman had worked for three years in unbroken continuity and that his services were dispensed with without any notice or payment of any compensation as contemplated in law notwithstanding the fact that there was not a vestige of allegation against the workman.

2. The facts beyond the pale of controversy are that workman entered the service as watchman on 15.2.1983 on daily wage basis. He worked unhindered upto 22.4.1986 and thereafter, he was retrenched. The workman raised an industrial dispute which was referred by reference dated 17.6.1987 to the labour court for adjudication. The labour court rendered its award which was published on 1.10.1997 as stated supra.

3. Learned counsel for the petitioner employer embarked upon certain details

stating that the Kisan Sahkari Chini Mills was set up and to make it workable, skeleton staff was raised and the workman was engaged on daily wage basis but he was not given any appointment letter. Thereafter, selection proceedings commenced in accordance with law and in consequence, the workman failed to qualify in the selection and resultantly, his services were dispensed with. It was further canvassed that since he did not qualify in the selection process, he was disentitled to be given any notice or compensation. He further submitted that by all reckoning, his Initial appointment was subject to final selection. In opposition, learned counsel for the respondent No. 2 contended that it brooked no dispute that the workman had worked for three years in unbroken continuity and by this reckoning, he was entitled to the protection as contemplated in Section 6N of the Industrial Disputes Act. Lastly, he submitted that the workman was entitled to be resituated in service in the facts and circumstances of the case.

4. The matter was taken up by this Court on 12.2.1998 on which date while issuing notice, the Court stayed operation of award dated 30.1.1997. On 15.9.1999, the aforesaid order suffered modification and it was provided as a condition of stay that the petitioner employer would observe in compliance with the requirements of Section 17B of the Act. On 24.5.2002, the matter again came up before the Court on which date the petition was admitted and as an interim measure, it was directed that the employer-petitioner would resituate the workman in service within a month attended with further direction to the petitioner-employer to deposit the entire arrears of back-wages within three months. In the wake of this order, an application was preferred by the learned counsel for the petitioner-employer with the prayer to recall the order dated 24.5.2002. It was in the course of argument on this application, that both the parties agreed in unison that the case itself be disposed of finally. It was in this background that the case was heard for final disposal.

5. In the light of the arguments made by the learned counsel for the petitioner-employer that the respondent No. 2 was appointed on daily wage basis and his appointment was subject to regular selection by the selection committee and that in the selection process, the selection committee appraised the case of the petitioner and found that the workman was not fit for the post of watchman and thus, he was not entitled to be given any notice as required u/s 6N/25F of the Industrial Disputes Act, I feel called to go into the essentials of the provisions of Section 6N of the U. P. Industrial Disputes Act and Sections 25F and 25B(1) and 2(1) of the Industrial Disputes Act for appreciation of the controversy involved in this petition. Section 6N of the U. P. Industrial Disputes Act and Sections 25F and 25B(1) and 2(1) of the Industrial Disputes Act are quoted below ;

"6 (N) Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman

has been paid in lieu of such notice wages for the period of the notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement, which specifies a date for the termination of service ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government.

xxxxx "25 (F) No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice : (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months, and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by appropriate Government by notification in the Official Gazette.

25 (B) Definition of continuous service.--(1) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman ;

(2) Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer :

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than :

(i) one hundred and ninety days in the case of a workman employed below ground in a mine ; and

(ii) two hundred and forty days, in any other case ;

On the question whether benefit flowing from Section 25F/6N of the Industrial Disputes Act could be extended for application to daily wage worker, reference may be made to a decision of this Court rendered in Nagar Nigam, Bareilly v. Assistant Labour Commissioner, Bareilly and Anr., W. P. No. 31701 of 1994. In this case, quintessence of what has been held is that the daily wage worker would be entitled to the benefit flowing from Section 6N of the U. P. Industrial Disputes Act. This view received countenance in a decision of the Apex Court rendered in Workmen of Municipal Corporation of Delhi and another Vs.

Management of Municipal Corporation of Delhi and another, In the light of the ratio of the two decisions aforesaid, now the question that begs consideration is whether a person appointed on daily wage basis and who has completed three years of continuous service and was subsequently found not fit in the selection proceedings for regular appointment was entitled to be extended the benefit of Section 6N of the U. P. Industrial Disputes Act.

6. The finding of fact recorded by the labour court has for its basis the evidence that the workman had continuously worked for three years and it, therefore, follows that he will be entitled to be given the benefit of Section 6N of the U. P. Industrial Disputes Act. In nearly similar matter in Santosh Gupta Vs. State Bank of Patiala, where the confirmation test was prescribed as the basis for regular appointment, the workman who could not romp through the confirmation test, was visited with termination order, the Apex Court held the view that this amounted to retrenchment and that compliance of Section 25F was necessary. The paragraph germane to the point is excerpted below :

"..... We hold, as a result of our discussion that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was retrenchment within the meaning of Section 2(oo) and, therefore, the requirement of Section 25F had to be complied with."

This view of the Apex Court clinches the question and in the circumstances, the Tribunal rightly converged to the conclusion that termination of service of workman after three years of continuous service as dally wager, amounted to retrenchment and the workman was entitled to be extended the protection as envisaged in Section 6N of the U. P. Industrial Disputes Act. This view of the Apex Court fully countenances the view I am taking in this case.

7. Sri Ajit Kumar Singh, appearing for the petitioner-employer in vindication of the action taken by the employer submitted that the workman was not found fit and now the employer be permitted to dispense with the services of workman as a result of compliance with the requirements of Section 6N of the U. P. Industrial Disputes Act. In this context, the referred to paragraph 13 of the counter-affidavit in order to show that the respondent No. 2 has not denied that he failed to qualify in the selection proceeding. This argument of the learned counsel for the petitioner cannot be countenanced in law in that it would be trying to go beyond the bounds of law and scope of the jurisdiction of the Court where the award is under challenge. It is a matter on which this Court should forbear from pronouncing any opinion. Ultimately, the learned counsel invoked compassion of the Court by urging that Unit was reeling under grave financial straits and, therefore, the Court may in its discretion limit payment of arrears under the award to a permissible extent or else it would be fraught with the consequence of accentuating the already staggering fiscal condition of the Mills. In support of this submission, the learned counsel drew attention to the fact that the employer has already complied with the requirements of Section 17B of the Industrial Disputes Act in pursuance of the interim order of this Court and, therefore, payment of full

back-wages may be reduced to a permissible limit. I am conscious of the fact that benignancy beyond the bounds of law is not for Judges to try but having regard to the wisdom of saying that one should not be fostered by starving out the other, I feel that case is made out for qualified interference so as to strike balance between the parties, having regard to the peculiar facts and circumstances.

8. In the conspectus of the above discussion, and having regard to the fact that the petitioner has already honoured the interim order dated 15.9,1999 passed by this Court in compliance and satisfied the requirements of Section 17B of the Industrial Disputes Act and also regard being had to the fiscal constraints of the Mills, I feel that the ends of justice would be best attained if the petitioner-employer is ordered to pay half of the back-wages to the Opposite Party No. 2.

9. In the result, the petition is allowed in part and the impugned award is modified to the extent that the Opposite Party No. 2 shall be entitled to payment of half of the back-wages as Indicated in the Award of the Tribunal. The parties shall bear their respective costs.