

(2003) 10 AHC CK 0156
In the Allahabad High Court
Case No : C.M.W.P. No. 17119 of 2002

Kumari Neelam Sharma

APPELLANT

Vs

U.P. Financial Corporation

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2004) 1 AWC 69

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : K.P. Aggarwal and Suman Sirohi, for the Appellant; V.B. Singh and P.S. Baghel, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri K.P. Aggarwal, senior advocate and Ms. Suman Sirohi for petitioner and Sri V.B. Singh, senior advocate, assisted by Sri P.S. Baghel for respondent-corporation.

2. Brief facts giving rise to this writ petition are as follows :

Petitioner was employed by the respondent-corporation as stenographer/typist. Her services were terminated on 23.7.1994. She raised an industrial dispute which was referred by the State Government to the Labour Court (IV), Kanpur. It was registered as Adjudication Case No. 296 of 1995. By an award dated 19.7.1996 the Labour Court decided the reference in her favour. It was found that petitioner's services were Illegally terminated in violation of Section 6N of the U.P. Industrial Disputes Act, 1947 (in short, the Act). The corporation was directed to reinstate her in service and to pay to her Rs. 1,200 per month for the period she was restrained from working. A Writ Petition No. 30267 of 1996, filed by corporation against the award was dismissed on 13.10.2000. This Court held : (a) the Corporation is an "industry" within the meaning of the definition in the Act ; (b) the petitioner is a "workman" ; (c) the definition of the word

"retrenchment" in the Industrial Disputes Act, 1947, (In short the Central Act) with the exceptions in Section 2(bb), (oo) as amended by Act No. 49 of 1984, being later in time, would, in view of Article 254(1) of the Constitution of India, prevail over the definition in the State Act ; (d) petitioner was Initially appointed as apprentice on 12.9.1988 and thereafter she was appointed against a regular post of steno/typist on 12.12.1988, and she worked up to 22.7.1994, on the basis of the contract, appointment issued from time to time for three months. She was engaged for a work of permanent nature, and her appointment for stipulated period, was not bona fide. The corporation acted arbitrarily in giving appointment for specified period to deprive her of the statutory benefits which amounts to unfair labour practice, and (e) applying the exception carved out in State of Rajasthan v. Ramesh Lal Gehlot, to the case, it was found by labour court that termination of petitioner's services would come within the purview of retrenchment notwithstanding the provision of Clause (bb) of Section 2(oo) of the Central Act. A SLP No. 6568-6570 of 2001 from the above judgment and other connected cases was dismissed by Supreme Court on 29.4.2001, by order quoted as below :

"Leaving the question of law open, these special leave petitions are dismissed."

3. In the above referred proceedings there was no stay of the award, except for the brief period between 12.4.2001 and 29.4.2001, when the SLP was pending in Supreme Court. Petitioner applied u/s 6H (1) of the Act for recovery under the award. Aggrieved against the recovery certificates of Rs. 35,040, Rs. 26,280 and thereafter Rs. 78,784, u/s 6H (1) of the Act by the Deputy Labour Commissioner, the corporation filed a Writ Petition Nos. 32150 of 1997, 2789 of 1998 and 34381 of 1999, which were heard and were dismissed along with the main Writ Petition No. 30267 of 1997, and against which special leave petitions, were dismissed by the aforequoted order.

4. The petitioner was reinstated by order dated 31.10.2001. She was permitted to join duties on 5.11.2001. The corporation is treating her as a daily wager. She is being paid Rs. 104 per day without benefits of weekly holidays, dearness allowance, bonus and other service benefits. By this writ petition she has prayed to regularise her services from 12.9.1991 ; to pay regular pay scale with effect from 12.9.1991 ; to give all service benefits promotional avenues, to quash order of the Managing Director of the Corporation dated 27.12.2002, in pursuance of an interim order dated 26.11.2002 in this writ petition, by which the corporation has rejected her claim for regularisation, and regular salary for the reasons that she was engaged on dally wages, that her services were not against any sanctioned post, that there was no direction given by Court to treat her as regular employee ; that the corporation is suffering losses ; that the State Government has put a ban on any fresh appointment/ recruitment in the corporation, and that on a "manpower audit" the corporation has surrendered 159 posts on daily wage basis which includes 12 sanctioned posts of steno/typist. The corporation also stated in the letter deciding her representation that on the

recommendation of "G.P. Gupta Committee" (constituted by Ministry of Finance, Government of India) the Board of Directors of the Corporation have decided against any fresh recruitment up to the year 2010.

5. Sri K.P. Aggarwal submits that the findings of the labour court, as confirmed by this Court, and Supreme Court operate as resjudicata between petitioner and the corporation. This Court had found that petitioner was engaged and was performing work of permanent nature, and that corporation was extending her period only to avoid statutory benefits to her. She was engaged for permanent work and worked from 1988 to 1994, continuously, after which her services were illegally terminated. He submits that the long period of her services including the period she was not allowed to work and was reinstated with continuity in service, entitles her for regularisation. She cannot be denied such consideration on the ground of any ban or reduction of manpower or financial losses suffered by the corporation. He has relied upon the cases detailed as below for the proposition that such employees cannot be deprived of the benefit of regularisation :

(1) Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others,

(2) Bhagwati Prasad Vs. Delhi State Mineral Development Corporation,

(3) The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc.,

(4) State of Haryana and others Vs. Piara Singh and others etc. etc.,

(5) Jawaharlal Nehru Technological University v. Smt. T. Sumaiatha 2003 (98) FLR 1180.

6. Shri V.B. Singh has reiterated the reasons given in the letter of the Managing Director of the Corporation dated 27.12.2002. He submits that petitioner was never engaged on regular basis. She is still a daily rated employee engaged on same terms. The award and the judgment of this Court have not changed her status and she is not entitled to any regular salary. He has relied upon an interim order of this Court in Writ Petition No. 11831 of 2002 dated 19.3.2002 by which recovery in pursuance of order passed u/s 6H (1) was stayed. He has also laid stress upon the financial condition of the corporation and its policy for deferring all appointments until the year 2010. It is contended that a daily wager is not entitled to regularisation until a statutory order or any scheme provides for it. He submits that at the time her services were terminated she was paid Rs. 1,200 per month and that the labour court directed to pay her wages only at that rate. He has relied upon a number of cases, some of which are given as below :

(1) Utkal University v. Jyoti Mayee Naik 2003 (4) SCC 700

(2) Union of India v. Pradeep Kumar Saxena 1995 (4) SCC 69

(3) Union of India (UOI) Vs. Uma Maheswari and Others, and

(4) State Bank of India and Another Vs. M.R. Ganesh Babu and Others,

7. In Utkal University (supra), the relief of regularisation was not considered as respondent's services were terminated and he had challenged the orders in writ petitions before High Court. For equal pay, the Supreme Court found that there was no appointment order and nothing to support the claim as regular employee of the university. In Pradeep Kumar Saxena (supra), the claim was based upon 120 days of work and it was found that there was no foundation or even averment that the appointment was against any regular post. In Uma Maheshwari (supra), daily wagers engaged for different period during several years were disengaged, and their Job given to regular employees to get rid of mishandling of work. The Supreme Court held that in the absence of any scheme for regularisation and regular work, the C.A.T. could not direct reinstatement and regularisation. The decision in M. R. Ganesh Babu (supra) is a case relating to parity in employment and the principle of "equal pay for equal work". It was held that the principle is applicable to nature of work, duties and responsibilities and not the volume of work, and that the administration can fix different pay and conditions of service on such assessment based on its value judgment.

8. In the present case, the cases cited as above are not applicable. The petitioner and the corporation have contested these issues in pervious litigation which ended up to Supreme Court. The findings given by labour court as affirmed by this Court and Supreme Court have become final between them. The principles of res judicata based upon the equitable principle of estoppel, do not permit the Court to reconsider the same issues again. The same parties, pleaded, joined issues and contested the matters before the Courts of competent jurisdiction. It was held after assessment of evidence by labour court and confirmed by this Court that petitioner was engaged for work of permanent nature, and her appointment for stipulated period was not bona fide. These findings for better appreciation of the matter are quoted as below :

"The circumstances and exigencies of administration, in which the respondent was given appointment for specified duration, despite the fact that the work for which she was engaged was of permanent nature, were not disclosed, and the employer, it has been held, has acted in arbitrary manner in giving appointment to the respondent, Km. Neelam Sharma for a specified duration with a view to depriving her of statutory benefits. The conduct of the employer has been equated to "unfair labour practice". She was directed to be reinstated with continuity in service."

9. On the aforesaid findings which cannot be reopened, the prayer for regularisation is superfluous Petitioner was found to be a regular employee and with her reinstatement, she has regained her status of a regular employee. She does not require any direction, nor the corporation any further clarification, to treat her as regular employee. The corporation acted under a mistaken legal advice to reinstate her as a daily wager. The financial losses suffered by the corporation, the ban on employment, and its current recruitment policy, have no

bearing on her services.

10. The hapless petitioner has been a victim of ill-advised, might of the corporation. As an instrumentality of State, the corporation instead of acting like a model employer, has behaved like a private master, infuriated by the legal and just demands of a servant. Petitioner has been forced to defend herself in six writ petitions, two after corporation lost from Supreme Court. She had to apply five times for wages due to her before Deputy Labour Commissioner, and each time, the recovery certificate was challenged before this Court. She cannot be made to suffer any more, and needs to be compensated for the wrong done to her.

11. In the result, the writ petition succeeds and is allowed. The order of the Managing Director of the U.P. Financial Corporation, dated 22.12.2002 is set aside. The petitioner is declared to be a regular employee of the corporation and is held entitled to regular salary as Stenographer/Typist. She is held entitled to salary in regular pay scale with effect from the date of publication of labour court award, with all admissible allowances, as well as current salary at the same rate. She will be given seniority with effect from 12.9.1991, along with other regular employees of the same trade. For the reasons stated above, the corporation will compensate her for frivolous litigation thrust upon her, quantified at Rs. 50,000. The difference of salary and allowances and the compensation quantified as above shall be paid to her as expeditiously as possible and in any case within two months. The respondents shall also pay costs of this petition to the petitioner.