

(1994) 05 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9802 of 1984

Lallan Ram

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 13-05-1994

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (1994) 2 AWC 1228 : (1994) 3 UPLBEC 1461

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : S.C. Budhawar, for the Appellant; Rakesh Tewari and J.N. Tewari, for the Respondent

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—This writ petition was moved on behalf of Lallan Ram, an employee of U.P. State Cooperative Land Development Bank Limited, Lucknow, being Respondent No. 2, who has challenged the order of termination of his service with effect from 1st July, 1979.

2. An industrial dispute having been raised by the appropriate Government, the matter was referred to the presiding Officer, Labour Court, Gorakhpur, being Respondent No. 1, who after taking necessary evidence, passed an award on 28th May, 1984, holding inter alia, that the termination of services of the Petitioner by the employer w.e.f. 1-7-1979 was illegal and it violates the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1974.

3. For decision in the case, Section 6-N of the U.P. Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") is relevant, which is being 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 reason 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 workmen 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.

4. Sri S.C. Budhwar, learned Counsel, appeared for the Petitioner and Sri I.N. Tewari, learned Counsel appeared for the Respondent-employer.

5. Sri Tewari, learned Counsel for the employer vehemently urged that the presiding Officer of the Labour Court has committed error in arriving at the conclusion that the termination of the services of the Petitioner was amounting to retrenchment in terms of provisions contained in Section 6-N of the Act, as according to him, the provisions of the said Act would not be applicable to the facts and circumstances of the present case but the provisions of Industrial Disputes Act, 1947 (Central) would be applicable.

6. It was further contended by him that the Petitioner being casual employee and there being break in service of the Petitioners, he had not completed 240 days, at stretch, and, as such, Petitioner was not entitled to any relief from the Tribunal.

7. Having heard learned Counsel for the parties, at length, I am afraid that I am not inclined to accept the contention of Sri Tewari, learned Counsel for the Respondents. In my opinion, Tribunal being final authority for deciding questions of facts, having reached to the relevant conclusion that termination amounts to retrenchment within the meaning of Section 6-N of the Act (U.P. Industrial Disputes Act, 1947) and the Respondent No. 2, having not challenged the same, or filed any cross objection (which is, however, not applicable in the writ proceeding), is not entitled to assail that part of the order of the Tribunal. Thus, in view of the fact that the presiding Officer, Labour Court, has held that the order of termination of services is amounting to retrenchment within the meaning of Section 6-N of the Act, the Petitioner, an employee, is entitled to be reinstated, but, the same order does not grant the relief of reinstatement to the Petitioner. Therefore, Petitioner is entitled to move the present writ petition before this Court.

8. It appears that at the time of filing of the writ petition, Hon'ble Mr. H.N. Seth J, as His Lordship then was, declined to pass any interim order and directed that the question of granting appropriate interim order would be considered at the time of final hearing.

9. In view of what has been stated above, I am of the view that once the Labour

Court, or, the Industrial Tribunal arrives at necessary conclusion that termination is amounting to retrenchment, the ordinary corollary, or, eventuality is to direct for the reinstatement of the employee, which has not been done in the instant case

10. In the result, the writ petition succeeds and is allowed. The Petitioner is entitled to reinstatement with all back wages, and, consequential reliefs, in accordance with law. The Bank-Respondent No. 2 is directed to reinstate the Petitioner forthwith, preferably within seven days from the date of production of a certified copy of this judgment and order, and finalise arrears of back wages, within two months thereafter. The parties shall bear their own costs.