

(1993) 12 AHC CK 0018

In the Allahabad High Court

Case No : Writ Petition No. 7426 of 1990 (with connected Writ Petition No. 11781 of 1990)

Maresh Chandra

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 18-12-1993

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(k)

Citation : (1993) 12 AHC CK 0018

Hon'ble Judges : J.K.Mathur, J

Final Decision : Allowed

Judgement

J.K. Mathur, J.—This petition is directed against an order passed by the respondent No. 2 terminating his services with effect from 671990.

2. According to the petitioner, he was working as Tubewell Operator on daily wages, having been appointed on 161989 and he continued as such till his services were terminated. His contention is that he being a workman and having worked for a continuous period of more than 240 days he is entitled to the protection of Section 25(f) of the Industrial Disputes Act which corresponds to Section 6N of the U.P. Industrial Disputes Act.

3. The petitioner subsequently moved another petition by which a subsequent order of termination passed against him on 30101990 by which he was retrenched again, having been permitted to join in pursuance of the interim order passed in Writ Petition No. 7426 of 1993, has also been challenged on similar grounds. Both the petitions were heard together and are being decided together after hearing the counsel for parties at this stage.

4. It is not disputed that the petitioner was working as TubeWell Operator and was, therefore, a workman. Respondent No. 2 being a Municipal Board, would be an industry. In these circumstances the petitioner was entitled to the protection of Section 6N of the U.P. Industrial Disputes Act because he admittedly worked

for a period of more than 240 days continuously in the year preceding retrenchment.

5. The petition is opposed mainly on the ground that the post was not sanctioned by the Commissioner and, therefore, he cannot be kept in employment any longer. As far as the provisions of Section 6N of the U.P. Industrial Disputes Act are concerned they are not dependent on the availability of the post. In case it is proved that the petitioner as a workman was qualified for the protection of this provision and the provisions of Section 6N of the U.P. Industrial Dispute Act are not complied with, the order of retrenchment itself becomes illegal and has to be quashed.

6. In case the post has not been sanctioned, the Municipal Board, in these circumstances, can move the appropriate authority for that purpose but that cannot be an impediment in the petitioner's being given a right protected by Section 6N of the U.P. Industrial Disputes Act.

7. As a result I find that the order of termination passed in each of the two cases is in violation of the provisions of Section 6N of the U.P. Industrial Disputes Act and cannot be sustained. These orders are hereby quashed. The writ petitions are allowed accordingly. The petitioner shall be entitled to continue in service and get the wages.