

**(2011) 04 AHC CK 0078**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 5613 of 2001

Managing Director, Pradeshik Cooperative Dairy Federation  
Ltd. and Another

**APPELLANT**

**Vs**

Presiding Officer Labour Court and Others

**RESPONDENT**

**Date of Decision :** 06-04-2011

**Acts Referred:**

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 6N

**Citation :** (2011) 6 ADJ 338 : (2012) 1 LLJ 230 : (2011) LLR 799 : (2011) 2 UPLBEC 1666

**Hon'ble Judges :** S.U. Khan, J

**Bench :** Single Bench

## **Judgement**

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Respondent No. 3 Awadesh Kumar Pathak was employed by the Petitioner on 11.11.1986, copy of appointment letter is annexed as Annexure 2 to the writ petition. In the first sentence of the appointment letter it was mentioned that Respondent No. 3 was being appointed on the temporary post of Lab Assistant, in para 3 it was mentioned that appointment should be subject to the terms and conditions as provided under the U.P. Cooperative Societies Employees Service Regulations 1975 and other relevant Rules etc. In para 8 of the appointment letter it was mentioned that Respondent No. 3 should be on probation for a period of one year which might be extended for one more year. In para 11 it was mentioned that services were purely temporary and liable to be terminated on once month's notice or pay. Annexure 4 to the writ petition is copy of the order dated 11.8.1987 passed by the Petitioners extending the probation period of Respondent No. 3 for a further period of six months. Thereafter, through order dated 25.3.1988 services of Respondent No. 3 were terminated, copy of the said order is annexed as Annexure-15 to the writ petition according to which temporary services of the Respondent No. 3 were terminated with immediate effect in accordance with the Clause 17(2) of the Service Regulation 1975 and Clause 11 of his appointment letter dated 11.11.1986 giving him one month's

salary in lieu of notice.

3. The Respondent No. 3 raised an industrial dispute and the matter was referred to the Labour Court to decide as to whether the action of Petitioner-employer terminating the services of its workman Respondent No. 3 w.e.f. 29.3.1988 was just and valid or not?

4. It appears that termination order dated 25.03.1988 was received by Respondent No. 3 on 28/29.3.1988 hence in the reference order date of termination was mentioned as 29.3.1988.

5. The dispute, after reference, was registered as Adjudication Case No. 192 of 1989 before Presiding officer, Labour Court, U.P. Agra and was decided on 14.3.2000 holding that termination was illegal as neither any domestic inquiry had been held nor retrenchment compensation in terms of Section 6N of U.P. Industrial Disputes Act had been paid and directing reinstatement with full back wages.

6. The case of the Petitioner before the Labour Court was that the work of Respondent No. 3 was not satisfactory hence his services were dispensed him and he being on probation was not entitled to question the termination order which was perfectly in accordance with appointment letter. The same thing has been argued as first point before this Court.

7. It has also been argued as second argument by the learned Counsel for the Petitioners that in view of Supreme Court Authority in Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, the disputes between co-operative societies and their employees in U.P. cannot be adjudicated by the Labour Court.

8. As far as first point is concerned, it is not tenable. From the perusal of Annexure 2 the appointment letter it is not at all clear as to whether Petitioner was appointed on temporary basis or on probation. Only an employee, who is appointed on permanent post can be placed on probation. Both the words have been used in the appointment letter i.e. probation as well as temporary. Such type of appointment is unknown to Service Jurisprudence. Moreover, there was absolutely no occasion to extend the probation period in August 1987 when the initial probation period was continuing and it was to expire after about three months i.e. in November 1987.

9. Even a probationer or an appointee for a fixed period is entitled to the benefit of Section 6N of the U.P. Industrial Disputes Act. Under (Central) Industrial Disputes Act termination on the expiry of period of appointment does not amount to retrenchment as per Section 2 (oo) (bb), however, under U.P. I.D. Act even such cessation of employment is retrenchment requiring compliance of its Section 6 N.

10. Through interim order dated 27.2.2001 passed in this writ petition, operation of the impugned award was stayed till further orders provided the Petitioner

reinstated the Respondent No. 3. It has been stated that thereafter Respondent No. 3 was reinstated and is working till date.

11. To set aside the award only on the ground that due to subsequent judgment of the Supreme Court, Labour Court could not decide the matter will be extremely unjust. It is settled principle that exercise of writ jurisdiction is discretionary and it can very well be refused if setting aside the impugned order will give rise to an unjust situation or will revive/ restore an unjust illegal order. If the impugned award is set aside only on the ground of subsequent declaration of law by the Supreme Court (which is always retrospective), termination order of Respondent No. 3 which has been found to be illegal through this judgment as well as by the Labour Court will be restored. Accordingly second argument of learned Counsel for Petitioner is also rejected.

12. However without recording any finding that the workman was not engaged for gain anywhere, back wages could not be directed to be paid by the Labour Court.

13. Accordingly taking all the facts and circumstances of the case into consideration, in my opinion, the interest of law and justice will best be served by allowing the writ petition in part, setting aside the direction for payment of back wages given through the impugned award and maintaining the same in other regard (reinstatement).

14. Ordered accordingly.