

(2013) 03 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65274 of 2012

Nagar Palika Parishad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Constitution of India, 1950 — Article 14, 16
Constitution of India, 1950 — Article 14, 16

Citation : (2013) 4 ADJ 142 : (2013) 4 ALJ 110 : (2013) 5 AWC 4623 : (2013) 2 UPLBEC 1255

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Sunil Chandra Srivastava, for the Appellant; Brijesh Chandra Naik, for the Respondent

Judgement

Tarun Agarwala, J.—The petitioner has challenged the validity and legality of the award directing reinstatement of the workman with continuity of service and has awarded a sum of Rs. 25,000/- as compensation instead of back wages. The facts leading to the filing of the present writ petition is, that the workman was appointed as a Peon on daily wage basis on 2nd January, 1989 and continued to work in that capacity till 4th July, 1998 when his services was terminated on the ground that he was caught taking a bribe of Rs. 50/- for obtaining a photocopy of a document of the Nagar Palika and, leaking an official document of the Nagar Palika.

2. It transpires that upon a complaint being received, a trap was laid. The Executive Officer signed a Rs. 50/- note and through another person asked the workman to obtain a photocopy of a certain document, which he did upon accepting the money. The workman was caught red handed and the signed Rs. 50/- note of the Executive Officer was recovered. The Disciplinary Authority, after considering the gravity of the charge did not hold any inquiry and accepting the confession of the workman terminated his services on the ground that he was a

daily wager and that he was leaking out official documents of the Nagar Palika.

3. The workman, being aggrieved, raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The terms of the reference was "whether the employers were justified in terminating the services of the workman with effect from 4th July, 1998? If not, to what relief the workman is entitled to."

4. Before the Labour Court, the workman contended that he was threatened with dire consequences that a first information report would be lodged and, consequently, he placed his signatures on a blank paper, which has been utilized as a confession letter. The workman denied that any such incident had taken place or that he had taken a bribe of Rs. 50/-.

5. On the other hand, the employers in their written statement contended that the workman was employed on daily rate basis as a Peon and that he was caught taking illegal gratification and accordingly, he was discharged without holding an inquiry. The contention of the employer was clear that the workman was a daily rated person and that it was not necessary for them to hold an inquiry. Before the Labour Court various documents were filed, evidence was led and the documents were proved.

6. The Labour Court, in its award, has given a categorical finding that Rs. 50/- which the workman had accepted has been proved and that the signature of the Officer on the note has also been proved as well as the confession letter of the workman. The Labour Court, however, held that the workman had worked from 1989 to 1998 for almost 9 years and had worked for more than 240 days in a calendar year. The Labour Court accordingly, held that the discharge of the workman without complying with the provision of Section 6N of the U.P. Industrial Disputes Act was illegal and that the workman was entitled for retrenchment compensation, which admittedly had not been given. The Labour Court accordingly, directed reinstatement of the workman and, instead of granting back wages, awarded a compensation of Rs. 25,000/-. The petitioner, being aggrieved, by the said award has filed the present writ petition.

7. The learned counsel for the petitioner submitted that admittedly the workman was appointed on a daily wage basis de hors the Rules and even though the workman may have worked for a considerable period of time, he was not entitled for, reinstatement in the service. In this regard, the petitioner has relied upon a decision of this Court in State of U.P. and Others Vs. Kamlesh Kumar Tripathi and Others, , wherein the Court after considering various case laws held that where the engagement of an incumbent was de hors the Rules, the mere fact that the provision of Section 6N of the U.P. Industrial Disputes Act was violated did not entitle the workman for reinstatement with continuity of service and the Court or the Tribunal ought to have moulded the relief and could have granted compensation in lieu of reinstatement.

8. The learned counsel for the petitioner further submitted that the workman was

caught taking out photocopies of documents of the Nagar Palika which has been proved and, therefore, there is an irresistible presumption that the employers had lost confidence. The learned counsel submitted that on the ground of loss of confidence and, in the light of the fact that the misconduct has been proved, the question of reinstatement ought not to have been granted.

9. On the other hand, the learned counsel for the respondent-workman contended that the workman was working on a daily rate basis for a considerable length of time and his demand for regularization of his services was pending. In this regard, there were orders of the Nagar Palika not to dispense his services till his case for regularization was not finalized. It was contended that because the workman had raised a demand, this became the underlying reason for trapping the workman and dispensing his services on that score.

10. The learned counsel for the respondent-workman further submitted that the workman had specifically denied the charge and contended that he was forced to sign on a blank paper, which has been used as a confession under the threat that a first information report would be lodged.

11. The learned counsel for the workman further stressed and placed reliance upon the evidence of the workman, who deposed in his cross-examination that the signatures on Rs. 50/- note was never signed in his presence and, on this basis, contended that the document i.e. Rs. 50/- note was never proved.

12. Having heard the learned counsel for the parties at some length and having perused the award, the Court finds that admittedly the workman was appointed on a daily wage basis but had worked continuously for almost 9 years. The fact that he worked for 9 years indicates that there was a requirement of work and that he was not appointed on exigencies of work. Ever though there is nothing on record to indicate that the workman was appointed de hors the Rules, such plea cannot be raised by the petitioner at this stage. The petitioner is to be blamed itself for the mess. They cannot blow hot and cold at the same time. In the first instance, the petitioner made an illegal appointment and then cannot turn around and say that the appointment was de hors the Rules. Such submission will not give any relief to the employers. No evidence has been filed by the employer to indicate that the appointment of the workman at the initial stage was ex facie illegal or de hors the Rules.

13. On the other hand, evidence has come before the Court to indicate that the services of the workman and other similarly situated was being considered for their regularisation.

14. The law on reinstatement of a daily wager depends on the facts and circumstances of a particular case. In *State of U.P. and Others Vs. Kamlesh Kumar Tripathi and Others*, , the Court held:

The Apex Court in the case of *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, , has held that in every case of reinstatement, entire back

wages ought not to be awarded and even if the termination is in violation of Section 6N of the Act, the Court or the Tribunal ought to mould the relief and it granted 25% back wages in lieu of back wages and reinstatement. In Jaipur Development Authority Vs. Ram Sahai and Another, , it found that after long delay the relief of reinstatement was not justified and it replaced the relief by award of lump sum compensation., In U.P. U.P. State Road Transport Corporation Vs. Man Singh, , it considered that the incumbent was never appointed in accordance to the rules and therefore, after lapse of considerable period he was not entitled to reinstatement but award of compensation. Similarly, in Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, , it found that the incumbent was engaged de hors the rules which was in violation of Articles 14 and 16 of the Constitution and thus was a nullity but in view of the fact that he had worked for sometime, it granted lump sum compensation instead of reinstatement. Lastly, in the case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, , it reiterated that in the case of daily wager the appropriate relief is lump sum compensation.

Similar view has also been given by this Court in State of U.P. and Another Vs. Hind Majdoor Sabha and Others, .

15. In Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, , the Supreme Court held that the workman being a daily wager and having completed 240 days of continuous service in a calender year, whose services were terminated on the ground of financial irregularities without complying with the provision of Section 6N of the U.P. Industrial Disputes Act was entitled only for compensation, notice and notice pay instead of reinstatement.

16. In the instant case, the Court finds that the charge levelled against the workman was proved. The said charge is a grievous misconduct. It is irrelevant as to whether the document, which was photocopied by the workman was an official or a secret document or not. What is relevant is the action of the workman in taking illegal gratification and doing an act, which was not permissible, namely, photocopying a document without taking permission from the superior authorities. The said charge warranted the termination of the services of the workman, which in the instant case was done. The unfortunate part in this episode is, that even though the workman was a daily wager, he was entitled to be given an opportunity to defend himself in a domestic proceedings. A charge-sheet ought to have been issued to him; disciplinary proceedings ought to have been taken against him but, in the instant case, the same was not done and, under the garb that the workman was a daily wager, an order of dismissal was passed. It was not a simpliciter order of discharge but a discharge on the ground of accepting an illegal gratification.

17. The Court is of the opinion, that an inquiry was essential in the facts and circumstances of the instant case, even for a daily wager who had worked continuously for almost 9 years. Since the same was not done nor the provision of Section 6N of the U.P. Industrial Disputes Act was complied with, the order of

termination of the services of the workman was illegal and cannot be sustained.

18. The mere fact that the order of termination was illegal does not mean automatic reinstatement of the services of the workman. There are other factors which are required to be considered, namely, the nature of appointment in the service, the length of service; whether the appointment is of a fixed period or whether the appointment was a temporary one or was a permanent appointment. These factors and the mitigating circumstances would help in moulding the relief. This view of the Court is fortified by a decision of the Supreme Court in *General Manager, Haryana Roadways Vs. Rudhan Singh*, , as well as in *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, , where the Supreme Court held that back wages is not given as a matter of right and that the employee also has to show that he was not gainfully employed.

19. Considering the aforesaid fact, coupled with the fact that the misconduct of the workman stood proved, the Court is of the opinion that the Labour Court was not justified in reinstating the workman. No employer would like that their records are tampered and photocopies taken out without their permission by a Class-IV employee. The action of the workman makes it implicitly clear that the employers lost confidence in the workman.

In the light of the aforesaid, this Court is of the opinion that the award of the Labour Court directing reinstatement of the workman was without any justification in the facts and circumstances of the case.

The Supreme Court in *Mahboob Deepak's* case (supra) has held that on account of violation of the provision of Section 6N of the U.P. Industrial Disputes Act, the workman at best could be granted compensation as per the provision of Section 6N of the U.P. Industrial Disputes Act. In this regard, the Court is of the opinion that calculation of retrenchment compensation u/s 6N of the Act at this stage would not be an adequate relief, since the rates of wages existing at the stage of termination of the services and today have increased by leaps and bounds. The inflation will make the retrenchment compensation a meagre amount. Further, the Court is not aware as to what was the wages paid to the workman at the time of his alleged termination. The Court further finds that no useful purpose would be served in remitting the matter back to the Labour Court for the calculation of retrenchment compensation. The Court is of the opinion that the dispute, which was raised in the year 1998 should come to an end. The Labour Court has awarded Rs. 25,000/- as compensation in lieu of back wages. Taking a clue from this, the Court is of the opinion that instead of reinstatement and for violation of the provision of Section 6N of the U.P. Industrial Disputes Act, the employer should pay in addition to the amount awarded by the Labour Court, an additional sum of Rs. 50,000/- in lieu of reinstatement i.e. to say the employers should pay a total sum of Rs. 75,000/- to the workman concerned.

In the light of the aforesaid, the writ petition is partly allowed. The award of the Labour Court is modified to the extent that instead of reinstatement, the

workman would only be entitled for Rs. 75,000/-. The said amount shall be paid to the workman concerned by the petitioner within four weeks from today.

In the circumstances of the case, parties shall bear their own cost.