
(1999) 04 AHC CK 0180
In the Allahabad High Court
Case No : C.M.W.P. No. 669 of 1990

Nagar Palikar, Dehradun and another	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1999) 3 AWC 1801

Hon'ble Judges : S.K. Jain, J

Bench : Single Bench

Advocate : H.S. Nigam, for the Appellant; P.C. Jhimgan, M.S. Bhandari and Shekhar Srivastava and S.C., for the Respondent

Judgement

S.K. Jain, J.—This petition has been filed for issuing a writ in the nature of certiorari quashing the award dated 3.6.1989 published in the Notice Board on 24.7.1989 (Annexure-V) passed by the Executive Officer, Labour Court, Dehradun.

2. The facts, briefly stated, are that respondent No. 3 Parmanand was appointed as a Beldar on probation for a period of one year on the recommendation of the Engineer of Municipal Board, Dehradun. Later on, it was discovered that respondent No. 3 was related to the Engineer of Municipal Board, Dehradun and his brother was also already in service of Nagar Palika. Since his work was not found to be satisfactory, as such his service was terminated on 31.10.1987. The respondent No. 3 raised the dispute before the State Government of U. P. respondent No. 1 and respondent No. 1 made a reference to Labour Court, respondent No. 2 to determine whether the service of respondent No. 3 on the post of Beldar was illegally or rightly, terminated by the employer on 31.10.1987. The respondent No. 3 had filed the written statement alleging that his appointment on the post of Beldar was permanent and his work was satisfactory throughout. It was further alleged that the impugned order of termination of his service is wholly illegal and against the principles of natural justice. It was also

alleged that respondent No. 3 had worked for more than 240 days continuously and as such the order of termination is illegal. The petitioner contested the aforesaid reference filed before the Labour Court on the ground that the appointment of respondent No. 3 was illegal and also that his work had been found unsatisfactory and as such his services were terminated. The petitioner had denied that the provisions of Industrial Disputes Act, 1947 are applicable and it is claimed that the respondent No. 3 is not a workman. It is also alleged that the respondent No. 2 had no jurisdiction to entertain the present reference and the award dated 3.6.1989 passed by the Labour Court, holding that the order dated 31.10.1987 is illegal and directing for reinstatement of respondent No. 3, is wholly illegal and without jurisdiction.

3. I have heard the learned counsel for the parties and perused the record.

4. The first important point for consideration in this case is that whether the provision of Section 25F of the Industrial Disputes Act, 1947 applies to the present case or not. It was held by the Hon. Supreme Court in *Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others*, that the concept of the Industry was excluded to the extent, appointments are regulated by statutory rules in a Government Department. It was further held that every department of Government cannot be treated as industry and dispensing with services of persons engaged on daily wages in a Government department, therefore, did not amount to retrenchment, within the meaning of Section 25F of Industrial Disputes Act.

5. In the instant case, the main grievance of the respondent No. 3 before the Labour Court was that the order of termination of his service was passed in violation of Section 25F of Industrial Disputes Act. In view of the ruling of Hon'ble Supreme Court, referred to above, it appears that the contention of the respondent No. 3 has no force. He was appointed as Beldar in Municipal Board on 16.12.1986 on probation for a period of one year. Since his work was not found satisfactory as such his service was terminated on 31.10.1987. Obviously, the service of respondent No. 3 was terminated by the employer within one year of his employment by Municipal Board, Dehradun. The respondent No. 3 was appointed in service on probation for a period of one year on 16.12.1986 and his service was terminated within one year of the employment on 31.10.1987 in accordance with the service conditions provided. In the present case, it is found that since the procedure relating to the appointment and termination of Municipal Board's employees has been provided under the Municipal Boards Servants (Inquiry, Punishment and Termination of Service Rules as such the provisions of Industrial Disputes Act, are not attracted and the impugned award is without Jurisdiction. The respondent No. 3 was appointed in accordance with the Services Rules of Municipal Board and his service was terminated in accordance with the statutory rules-That being so, the disengagement of respondent No. 3 from his service cannot be construed to be a retrenchment under the Industrial Disputes Act. It may be pointed out there that the operation of the award in question was

stayed by this Court on 14.2.1990. It would thus appear that the respondent No. 3 is out of employment for over 9 years.

6. In view of the aforesaid discussions, I am of the view that the provision of Section 25F of Industrial Disputes Act does not apply to the present case and the petitioner's department cannot be treated as Industry. I am further of the view that since the service of respondent No. 3 has been regulated and terminated in accordance with the statutory rules of Municipal Board, the termination of respondent No. 3 does not amount to retrenchment and that being so, the award in question dated 3.6.1989 published in the Notice Board on 24.7.1989 passed by the Executive Officer, Labour Court, Dehradun is illegal and without jurisdiction and deserves to be quashed. It is ordered accordingly.

7. The costs of this petition are made easy.