

(1995) 09 AHC CK 0015
In the Allahabad High Court
Case No : C.M.W.P. No. 36177 of 1991

Naresh Pratap Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (1995) 09 AHC CK 0015

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : G.R. Jain, for the Appellant; V.D. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The Petitioner has sought writ of mandamus commanding the Executive Officer, Cantonment Board, Fatehgarh, district Farrukhabad, Respondent No. 3, to take the Petitioner back in service and appoint him permanently on the sanctioned post of Gardener.

2. The version of the petition is that he was working since 1983 as Gardener on daily wages in Cantonment Board, Fatehgarh, district Farrukhabad. His services were terminated orally in the month of May, 1991. The Executive Officer, Cantonment Board, Respondent No. 3, had sent a letter in the year 1990 to the District Defence Estate Central Command, Lucknow Cantt. for sanction of the post of Gardener in the name of the Petitioner. The post was sanctioned but Respondent No. 3 did not make the Petitioner permanent on the sanctioned post of Gardener and when the Petitioner repeated the request, his services were terminated orally in the year 1991. The Petitioner has challenged the action of Respondent No. 3.

3. Learned Counsel for the Petitioner submitted that the Petitioner having worked during the period 1983 to 1991 was entitled for regularisation in service. Respondent No. 3 acted illegally and instead of regularising his service, he

terminated the services of the Petitioner. A daily wager is not entitled to regularisation in service as a matter of right. It depends upon various factors, namely, availability of post, the conduct of the employee, his qualification and suitability. In *Zakir Hussain v. Engineer-in-Chief Irrigation Department, U.P. Lucknow and Ors.* (1993) 1 UPLBEC 15, it was held that a person who was appointed on daily wages or on ad hoc basis does not have any right to the post and his service can be terminated at any time. He cannot claim regularisation of his services as a matter of right merely because he has worked for two or three years, or has completed 240 days in service. For regularisation, there must be both post and the need for retention of the employee according to the requirement of work. That apart, he must be qualified and the work and conduct of such employee must also be satisfactory.

4. In *Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. and Anr. v. Maharashtra State Co-operative Cotton Growers "Marketing Federation Employees" Union and Anr.* AIR 1994 SC 1046, it was held that seasonal employees putting more than 240 days service are not entitled for regularisation merely on that ground;

5. In *Madhyamik Shiksha Parishad U.P. v. Anil Kumar Mishra* 1994 ALJ 389, the Supreme Court held that the person working under Education Board on ad hoc assignment has no right of regularisation merely because he has completed 240 days of work till duly sanctioned post is created.

6. Learned Counsel for the Petitioner has placed reliance upon *Parmod Kumar Shahi and others Vs. State of Bihar and others*, wherein certain employees who were originally working as Managers of the Primary Agricultural Co-operative Society were taken on deputation as Assistant Cashiers by the Sitamarhi Central Co-operative Bank. Some of them were absorbed in the service of Co-operative Bank but the services of some of them were dispensed with. The Supreme Court held that as the posts were vacant and the employees were qualified and working for many years, they were entitled to be absorbed in the services of Co-operative Bank. It was a case where employees were working on deputation and claimed absorption and on the facts of that case, their Lordships of the Supreme Court found that they were entitled for absorption in the service of the Bank.

7. Learned Counsel for the Petitioner has further placed reliance upon the decision in *Angal Lal v. State of U.P. and Ors.* in Civil Misc. Writ Petition No. 4369 of 1990 wherein the learned Single Judge of this Court relying upon the decision in *Ram Khelawan v. State of U.P.* 1992 LabIC 2277, has held that if an employee has worked for more than three years, than before terminating his services, an opportunity of hearing should be given or else a heavy burden lies on the State to Justify the termination of service. It was held, on the facts of that case, that the Petitioner was entitled for reinstatement in service.

8. In the present case, a counter-affidavit has been filed on behalf of the Respondents. In paragraph 5 of the counter-affidavit, it has been stated that no

post of Gardener had ever been sanctioned for the Petitioner, as alleged in the petition. The Petitioner has not placed any material to show that any post of Gardener was sanctioned on which the Petitioner should have been absorbed. Secondly, it is for the appropriate authority to consider the conduct of the Petitioner in taking work on daily wages from him. The Petitioner has no right to regularisation as held by a Division Bench of this Court in Zakir Husain's case (supra). In case the Petitioner moves an application for permitting him to work on daily wages, it is for the appropriate authority to consider his case for taking the work from him on daily wages or regularisation in service in case the post has been sanctioned.

9. The second submission of learned Counsel for the Petitioner is that while orally terminating the service of the Petitioner, no reason has been assigned. The Petitioner was admittedly not given any appointment letter or appointed under any statutory provision. He was working on daily wages. If a person is not entitled for regularisation to a post and is working on daily wages, it is not necessary to assign any reason while asking him not to do work.

10. The third submission of learned Counsel for the Petitioner is that the services of the Petitioner have been terminated by way of victimisation and it was mala fide. The Petitioner has not impleaded any person by name in the writ petition and no personal allegation has been made against any officer. In paragraph 5 of the writ petition, it has been stated that as his post was duly sanctioned and he asserted his right to be made permanent, his services were terminated. This fact has been denied in paragraph 7 of the counter-affidavit. In paragraph 5 of the counter-affidavit, it has been stated that no post of Gardener has ever been sanctioned by the Director of Defence Estates, Central Command, Lucknow Cantt., as alleged in the writ petition.

11. The last submission of learned Counsel for the Petitioner is that the Petitioner had worked for more than 240 days and his services have been terminated without giving him retrenchment compensation, as contemplated u/s 6N of U.P. Industrial Disputes Act, 1947 and, therefore, the order of termination of his services is invalid. He has placed reliance upon the decision Jagga Singh Vs. State of Punjab, . It was held that termination of service before expiry of extended probation period without showing any cause or reason amounts to retrenchment and one month's wages In lieu of notice having not been paid to the employee, the order of termination was Invalid. The Petitioner has to satisfy two conditions before claiming retrenchment compensation. Firstly, that he had been in continuous service for not less than one year under an employer and secondly, he was employed in an industry. The version of the Petitioner is that he has worked continuously for four years under Respondent No. 3. He has placed reliance upon a certificate issued by Executive Officer, Fatehgarh. Annexure-1 to the writ petition and another certificate dated 31st October. 1988 by Executive Officer, Fatehgarh Cantt. In the counter-affidavit, it has been denied that the Petitioner has worked continuously for 240 days in a year. The second question is

whether Respondent No. 3 is an industry. The Petitioner can raise an industrial dispute under the provisions of U.P. Industrial Disputes Act, 1947.

In view of the above, the writ petition is dismissed.