
(2019) 11 UK CK 0131

In the Uttarakhand High Court

Case No : Writ Petition No. 1504, 2459 Of 2016

Omkar Mishra

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Uttar Pradesh Industrial Act, 1947 — Section 2(g), 4(K), 6N
Limitation Act 1963 — Article 137

Citation : (2019) 11 UK CK 0131

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Mohd. Matloob, I.P. Kohli

Final Decision : Dismissed/ Allowed

Judgement

Sharad Kumar Sharma, J

1. These are two writ petitions. The Writ Petition No. 1504 of 2016 'Omkar Mishra vs. State of Uttarakhand and Another' has been preferred by the workman challenging the part of the award dated 07.12.2015, as rendered by the presiding officer, Industrial Tribunal/Labour Court Haldwani, Nainital, in Adjudication Case No. 3 of 2006, whereby, the Labour Court has forfeited, 75 percent of the backwages of the petitioner and had only directed the reinstatement of the petitioner with 25 percent of the backwages. It is the said part of the award denying the remaining 75 percent of backwages, which is the subject matter of consideration in the present writ petition.

2. As far as the Writ Petition No. 2459 of 2016 'Chief Engineer (North), Irrigation Department, Haldwani and Another vs. Omkar Mishra' is concerned, the same has been preferred by the employer as against the impugned award. The challenge has been given by the State to the part of the award dated 07.12.2015, by virtue of which 25 percent of the backwages and reinstatement has been granted to the petitioner of Writ Petition No. 1504 of 2016. It is said

part of direction of reinstatement and payment of 25 percent of backwages, which is subject matter of challenge in the present writ petition by employer.

3. There are certain factual backdrops, which are essentially required to be considered prior to the adjudication of the writ petition on its merit.

4. The admitted position and the facts, which has emerged after hearing the learned counsel for the parties, is that the petitioner was engaged on the post of Beldar exclusively on a temporary basis w.e.f. 01.01.1983. The case of the petitioner is that since he has worked for 240 days continuously prior to removing him from services, hence, there has to be a compliance of the provisions of Section 6 N of the U.P. Industrial Disputes Act, 1947, and since the same has not been complied with, that would vitiate the action of termination of his services w.e.f. 01.07.1986, and it would be violative of the provisions contained under Section 6N of the U.P. Industrial Disputes Act of 1947.

5. Consequentially, after the termination of his services on 1.07.1986 it is not in dispute that the reference of the said dispute for adjudication as against the order of termination dated 01.07.1986, was for the first time sought for by the petitioner by seeking a reference only in 2002. Consequentially, the State Government while referring the dispute for adjudication has passed the Government Order No. 427-33 श्रम आ0/36-श्रम (1) सी0पी0 67 of 2005, wherein, the reference was made for the first time on 25.01.2006, which was registered as an Adjudication Case No. 3 of 2006. As a consequence of the reference made therein, the following question was sought to be adjudicated and referred before the Labour Court, which is quoted hereunder:

"क्या सेवायोजकों द्वारा अपने श्रमिक श्री ओमकार मिश्रा पुत्र श्री महेन्द्र मिश्रा बेलदार की सेवायें दिनांक 1.7.1986 से समाप्त किया जाना उचित तथा/अथवा वैधानिक है? यदि हां तो सम्बन्धित श्रमिक क्या हितलाभ पाने का अधिकारी है? तथा अन्य किस किस विवरण सहित?"

6. The precise issue was as to whether an action of the employer of terminating the services of the petitioner/workman w.e.f. 1.07.1986, was just and valid and if not then to what consequential relief he was entitled to receive.

7. As per the pleadings raised by the workman in the written statement filed on 24.07.2009 before the Labour Court, it was to the effect that after his induction as Beldar on 01.01.1983, he had submitted that he has worked continuously till 30.06.1986 and thus from that view point, he has completed 240 days of continuous service in a calendar year and, hence, he would be entitled for the protection under Section 6N of the U.P. Industrial Act of 1947, hence, compliance of the procedure would be mandatory and consequentially he has supported the reference made by the State under Section 4(K) of the U.P. Industrial Disputes Act.

8. The said plea as raised in the written statement by the workman was opposed by the employer (respondent herein in the present writ petition) that though he had worked w.e.f. 01.01.1983 till 30.06.1986, but thereafter there had been a

voluntary abandonment of services after 30.06.1986, as the petitioner had never responded back into the services and consequentially as per the details available of number of days, which the workman has worked and as referred in paragraph-3 of the written statement of the employer as submitted on 6.02.2009, it had shown the number of days the petitioner has worked in the respective calendar month with the employer was less than the required 240 days, which was required to comply Section 6 N of the Act of 1947.

9. The argument of the learned counsel for the petitioner (workman) is to the effect that though the reference as against the order of termination dated 01.07.1986, might have been sought at a belated stage in 2002 only, where the reference for adjudication of the dispute for the first time was made by the State by the Government Order dated 25.01.2006, but since as per the particulars of the number of days, which are available with the employer he has worked in each calendar year itself will commensurate to be a continuous service to be considered in the light of the definition of continuous service defined under the U.P. Industrial Disputes Act. As such the period of service rendered by him would be treated as to be satisfying the conditions of 240 days of continuous services in a calendar year and, hence, he would be entitled for the benefit of reinstatement along with the backwages.

10. The fact pertaining to the details with regards to the period of working of the petitioner is concerned that is a fact, which has been admitted by the employer in the written statement and thus looking to the detailed break up of services as provided on record and rendered by the petitioner (workman) it shows that the petitioner did satisfy the conditions of continuous service as defined under the U.P. Industrial Disputes Act, particularly as that contained under Section 2(g), which is quoted hereunder:

"(g) 'Continuous Service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on tire part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry."

11. Since there is no controversy raised even in the written statement at the behest of the respondent/employer that the petitioner in view of the details of the service period rendered by him, would fall to be within the ambit of continuous service as defined under Section 2(g) of the U.P. Industrial Disputes Act, the contention of the learned counsel for the petitioner (workman) is that he would be entitled to be reinstated into the services after setting aside the order of termination dated 01.07.1986 due to non-compliance of provisions contained under Section 6 N of the Act. As against the adjudication made by the reference court by virtue of the impugned award in question, the learned Labour Court has passed the following directions holding thereof that the termination of services

from 01.07.1986 was invalid and, hence, in view of the ratio propounded by the Hon'ble Apex Court he would be entitled to be reinstated into the services by paying him 25 percent of the backwages.

12. The bone of contention as raised by the Standing Counsel is to the effect that since it was a highly belated reference as made only in the year 2006, against the order of termination of 01.07.1986 the workman cannot be permitted to be the beneficiary of his own dereliction, though despite of the fact that statutorily no period of limitation has been provided under the U.P. Industrial Disputes Act for seeking a reference as against the order of termination from the services.

13. Though if the said interpretation is taken into consideration, in the light of the provisions contained under Article 137 of Limitation Act also, it cannot be said that the action of the petitioner (workman) for seeking a reference only in 2006, as against the action of termination of services in 1986, it could be treated as to be a belated reference and, hence, since being a belated reference, in case if at all what he would be entitled for, would only be entitled for the reinstatement into the services, but because of his own dereliction the employer cannot be harnessed upon the financial liability of paying the backwages, which as per the impugned award dated 7.12.2015 has been sought to be made to the extent of 25 percent of the backwages.

14. As against the reinstatement and the award of 25 percent of backwages, the employer has also preferred a connected writ petition. The question, which has been raised by the learned counsel for the petitioner(workman) in the writ petition is to the effect that after the termination of his services made on 01.07.1986, he had been approaching various forums for redressal of his grievance and when the same was not redressed, then at a later stage, when no option was left he was forced to invoke the provisions contained under Section 4K and the reference was made in 2006.

15. Having considered the argument as extended by the learned counsel for the petitioner (workman), it is an admitted case that the reference as against the termination of 01.07.1986 was sought by him only in 2006, i.e. almost after 19 years from the actual date of termination. Hence, I am of the view that in such an eventuality, the financial liability of paying backwages on the employer for the period for which the petitioner (workman) has not discharged his duties in lieu of his services irrespective of whatsoever nature the appointment might had been, the financial liability for it cannot be harnessed upon the employer by way of making a direction for remittance of 25 percent of the backwages and that too w.e.f. 01.07.1986 by impugned award, which was rendered on 07.12.2015. Hence, while considering the argument extended by the learned Standing Counsel, though the fact of the petitioner (workman) having continued to work for 240 days has to be considered in the light of the continuous services as defined under Section 2(g), even if at all the workman is treated to be in a continuous service for the period prior to his removal, i.e. 01.07.1986, and till the date of his induction on 01.01.1983, then too looking to the manner in which

the reference has been sought after 19 years, he would not be entitled for the backwages even to the extent of 25 percent as it has been determined by the Labour Court. Thus, the writ petition of the employer, i.e. Writ Petition No. 2459 of 2016, has to partly succeed atleast to the extent of direction for remittance of 25 percent of backwages.

16. Hence, in that view of the matter, the writ petition filed by the workman raising a claim with regards to the 75 percent of the backwages, which has been denied by the Labour Court in the impugned award dated 07.12.2015 cannot be faulted of in any manner whatsoever, because the workman cannot take the advantage of his own dereliction of seeking a delayed reference after 19 years. Hence, the writ petition as far as it has been preferred by the petitioner against the denial of the backwages of 75 percent of backwages cannot be faulted of in any manner whatsoever. Consequently, the writ petition of the workman fails, and is accordingly dismissed.

17. Reverting back to the writ petition preferred by the employer where a challenge is given to the order of reinstatement with 25 percent of backwages. As already having held that even if the petitioner is taken to have worked for more than 240 days with the employer (petitioner) of the Writ Petition No. 2459 of 2016, but the said continuity of having worked for 240 days prior to 01.07.1986 since it has already held that the entitlement of the backwages would be absolutely an arbitrary decision to make the employer responsible and liable for it, the said writ petition to that extent as far as the challenge was given to the remittance of 25 percent of the backwages to the workman is quashed and the writ petition is allowed to that extent and the liability of paying a 25 percent of backwages is hereby quashed. The workman would not be entitled for any backwaegs under the concept of no work no pay and that too when claimed after 19 years of termination.

18. Now, reverting back to the question of entitlement of reinstatement. After the order passed by the Labour Court directing the reinstatement of the workman w.e.f. 01.07.1986 the litigation remain pending by way of the writ petition and the reinstatement has not been made effective till date he has not been taken back into the services. In such an eventuality, even according to the age of the workman, which has been shown as to be of 58 years, as back as in 2016 when the writ petition was filed by the workman being Writ Petition No. 1504 of 2016, the sustainability of the judgment of the reinstatement as of now would be a fruitless exercise because as on today the petitioner has already attained the age of superannuation having being automatically retired from the services and, hence, since having retired from the services there is no question for giving direction as of now to be reinstated. Consequently, as such there is no need to challenge to the direction given to the direction of reinstatement, which has been challenged by the employer in Writ Petition No. 2459 of 2016 because the said claim becomes nonest for giving any reinstatement after retirement.

19. Hence, the writ petition so far as questioning the reinstatement is concerned,

since now it would be absolutely a futile exercise to permit the reinstatement of the workman after having retired, no order is required as far as it relates to the reinstatement of the petitioner into the services.

20. In that view of the matter, since having held that it was a highly belated reference sought after 19 years, the petitioner workman would not be entitled for any backwages as directed by the Labour Court by the impugned award. Consequently, the award directing the reinstatement with 25 percent of the backwages is hereby quashed and in view of what has been observed above that the petitioner since has already superannuated in accordance to the age, which he has attained as of now, there is no necessity as to pass any order of reinstatement of the petitioner into the services.

21. Consequently, the aforesaid two writ petitions, the Writ Petition No. 1504 of 2016 filed by the workman stands dismissed and as far as the Writ Petition No. 2459 of 2016 filed by the employer partially it is sustained and is allowed to the extent that direction of the payment of 25 percent of the backwages and as per the reinstatement is concerned, the said writ petition is allowed. The reinstatement direction as issued by the impugned award is quashed.

22. However, there would be no order as to cost.