

**(2017) 03 UK CK 0006**

**In the Uttarakhand High Court**

**Case No :** Writ Petition No. 778 of 2012 (M/S)

Principal Kanhaiya Lal Polytechnic

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

**Date of Decision :** 06-03-2017

**Acts Referred:**

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2(oo)(bb), Section 25F

**Citation :** (2017) 2 CLR 536 : (2017) 153 FLR 540 : (2017) LabLR 469

**Hon'ble Judges :** Rajiv Sharma, J.

**Bench :** Single Bench

**Advocate :** Mr. Siddhartha Sah, Advocate, for the Petitioner; Mr. R.C. Arya, Standing Counsel, for the Respondent No. 1/State; Mr. Pankaj Miglani, Advocate, for the Respondent No. 2

**Final Decision :** Dismissed

## Judgement

Rajiv Sharma, J.—This petition is directed against the Award dated 07.12.2011, rendered by Presiding Officer, Labour Court, Haridwar in Adjudication Case No. 492 of 2009.

2. Key facts necessary for adjudication of this petition are that respondent No. 2/workman was engaged on 07.08.1995. He had worked upto 13.08.2007. He was retrenched on 14.08.2007 without following the provisions of Section 6(N) of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "The Act, 1947") and Rule 42 of the Uttar Pradesh Industrial Disputes Rules, 1957 (hereinafter referred to as "The Rules, 1957"). He raised the industrial dispute. The matter was referred to the Labour Court after the failure report made by the Conciliation Officer. The respondent No. 2/workman filed the claim petition stating therein that he had worked for more than 240 days. The reply was filed by the employer.

3. According to the averments made in the claim petition, the respondent No. 2/workman had worked for more than 240 days in a calendar year. Learned Labour Court answered the reference in favour of the workman-respondent No. 2 on

07.12.2011. Hence, the present writ petition.

4. Learned Counsel appearing on behalf of petitioner has vehemently argued that there is no master-servant relationship. The respondent No. 2/workman had not completed 240 days in a calendar year and he was appointed under a scheme called "Samudaik Vikas Yojna".

5. Learned counsel for the respondent No. 2 has supported the Award.

6. I have heard learned counsel for both the parties and have gone through the material placed on record.

7. The respondent No. 2/workman was appointed vide appointment letter dated 07.08.1995 pursuant to the recommendations made by the Principal on Page No. 134 of the paper-book. The appointment of the respondent No. 2/workman was not under any particular scheme.

8. The attention of this Court has drawn towards the two agreements dated 22.06.2001 and 13.10.2001. No contract/agreement has been placed on record either before this Court or before learned Labour Court showing the existence of any agreement between 1995 to 14.08.2007 except agreements dated 22.03.2001 and 13.10.2001. The appointment of the workman-respondent No. 2 was on muster-roll basis. The workman has duly proved that he had completed 240 days in a calendar year. It is of no consequence whether the appointment of the workman was permanent or sanctioned. What is to be seen is whether the workman has worked for 240 days or not. The workman in his statement has duly testified that he had worked 240 days on being appointed by the Principal.

9. The averments made by the respondent No. 2/workman have not been rebutted by the employer/petitioner. Thus, the statement made by the respondent No. 2/workman is believable.

10. The workman has also been issued experience certificate by the Principal on 26.07.1997. Thus, there was a master-servant relationship. The workman has neither issued any notice under Section 25(F) of the Industrial Disputes Act read with Rule 42 of the Rules, 1957 at the time of his retrenchment. Thus, the retrenchment of the workman has rightly been found to be void ab initio by learned Labour Court, with the direction to treat the workman in service vide impugned Award by declaring his retrenchment illegal.

11. The workman was never apprised that he was appointed under a scheme/project for a particular period.

12. Their Lordships of Hon'ble Supreme Court in (2003) 4 SCC 27 in the case of "S.M. Nilajkar and others v. Telecom District Manager, Karnataka", have held that burden to prove the ingredients of sub-clause (bb) is on employer. Employment must be shown to be under a contract which stipulates that it would come to an end with the expiry of the project or scheme and the workers must be shown to have been made aware of such stipulation at the commencement of their

employment. Their Lordships further held that the workmen under the project or scheme, subject to satisfying the prescribed conditions, would be entitled to notice and compensation under Section 25-F (b). Their Lordships have held as under:-

"11. It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like-situations by Industrial Disputes (Amendment) Act, 1984 with effect from 18.8.1984.

12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term "retrenchment" a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term "retrenchment", and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" de hors the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of "retrenchment".

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry

of the scheme or project; and

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

(iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complaint that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of Sub-clause (bb) above said. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of Sub-clause (bb), as stated herein above. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

15. The appropriate provision which should govern the cases of the appellants is Section 25FFF, the relevant part whereof is extracted and reproduced hereunder:-

"25FFF. Compensation to workmen in case of closing down of undertakings.--(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of Sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section 25F shall not exceed his average pay for three months.

[Explanation : An undertaking which is closed down by reason merely of-

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this subsection.]

1A. [Not reproduced]

1B. [Not reproduced]

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up, no workman employed therein shall be entitled to any compensation under Clause (b) of Section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service] or any part thereof in excess of six months."

16. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in *Shalimar Works Limited v. Their Workmen* (supra) that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time without regard to the delay and reasons therefore. There is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in *Shalimar Works Limited v. Their Workmen* (supra). In *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors.* (supra), a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In *Ratan chandra Sammanta and Ors. v. Union of India and Ors.* (supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Employees Under P & T Department v. Union of India* (supra) the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings

under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

17. Since, the retrenchment of the workman was void ab initio, hence, he was entitled to reinstatement with all the service related benefits.

18. There is no illegality or perversity in the award dated 07.12.2011 passed by Presiding Officer, Labour Court, Haridwar in Adjudication Case No. 492 of 2009.

19. Accordingly, there is no merit in this petition and the same is hereby dismissed.