

(2018) 06 UK CK 0159

In the Uttarakhand High Court

Case No : Writ Petition No. 1568 Of 2017 (S/S)

Raghu Nath Singh

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 2g, 4K, 6N, 6E, 25B, 25F
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2018) 06 UK CK 0159

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Prashant Khanna, C.S. Rawat

Judgement

Sharad Kumar Sharma, J

1. The petitioner has filed the instant writ petition for the following reliefs :-

i) Issue a writ order or direction in the nature of mandamus commanding and directing the respondents to treat the petitioner in service

continuously from the date of his illegal termination i.e. 13.10.1990 and by counting the said services petitioner may be granted pensionary benefits.

ii) Issue a writ order or direction in the nature of mandamus commanding and directing the respondents to pay the services benefits / wages to the

petitioner from the date of the order of Hon'ble High Court i.e. 28.07.2005 till the date of attaining the age of superannuation.

iii) Issue a writ order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

iv) Award the cost of the petition.

The precise case of the petitioner is that he was appointed as a part-time Pump Operator / Helper in the Irrigation Division at Kodgi Pump House,

Rudraprag, District Rudraprayag in the undivided State of U.P. prior to Re-organization of the Act. His case is that he had been working regularly

since 1983 as part time Pump Operator / Helper and since his services were not being regularized since 1990, he preferred CV No. 504 of 1990 by

initiation the proceedings before the Conciliation Officer on 13th August, 1999, thereby, claiming the relief for regularization of his services. This

initiation of the proceedings, at the behest of the petitioner was treated as an unpleasant Act by the Irrigation Deptt. And was not taken up in its true

spirit and consequently the services of the petitioner were terminated on 13th October, 1990.

Being aggrieved against the order of termination, a Reference was sought by the petitioner by invoking provisions of Industrial Disputes Act, 1947 and

adjudication was sought to be referred by way of Adjudication Case No. 37 of 1995 making following reference under Section 4 K of the Industrial

Disputes Act :-

“Whether the termination of Shri Tika Ram S/o Shri Om Prakash Rawat, Helper and Shri Raghu Nath Singh Chauhan S/o Shri Hari Singh

Chauhan, Pump Operator by the employer is legal / or justified ? If no, then what benefit / relief concerned workman is entitled for and to what extent

?”

The Adjudication Case No. 37 of 1995, as preferred by the petitioner, had been dismissed by the Labour Court on 3rd June, 1998. Against the said

award of the Labour Court, the petitioner preferred a Writ Petition before Allahabad High Court, being Writ Petition No. 26742 of 1998, which after

the bifurcation of the State, stood transferred under Section 35 of the Re-organisation Act and was renumbered as Writ Petition No. 1037 of 2002

(M/S). This writ petition came up for consideration and was allowed by this High Court by the judgment dated 28th July, 2005. Consequent to it, the

award was set aside and order of removal dated 13.10.1990 stood quashed. Paragraph 7, 8, 10 and 11 of the said judgment reads as under :-

“7. This definition of Section 6-N and Section 2-g of the Act came into consideration before the Hon’ble Apex Court in the case of U.P.

Drugs & Pharmaceuticals Co. Ltd., Vs. Ramanuj Yadav and others {(2003) 8 Supreme Court Cases 334} by which the Apex Court in para 11 and

12 held as under:-

11. Learned counsel for the appellate, however, relies upon Mohan Lal Vs. Management of M/s Bharat Electronics Ltd. (1970 3 SCC 67. In that case, the Court was considering the scope of Section 25-B of the Industrial Disputes Act. It was observed that in order to invoke the fiction enacted in clause (2)(a) of Section 25-B, it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months, the just preceding the date of retrenchment and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. It was held that if there three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. In Mohan Lal's case, the appellant was employed with the respondent from 8 December, 1973. His services were abruptly terminated by letter dated 12th October, 1974 w.e.f. October 19, 1974. This Court said that it is not necessary for the purpose of clause (2)(a) of section 25-B that workman should be in service for a period of one year. It was held that if he is in service for a period on one year and that service in continuous service within the meaning of clause (1), his service would be governed by clause (1) and his case need not be covered by clause (2). Clause (2) envisages the situation not governed by Clause (1). Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period on one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the relevant date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decisions in the case of Mohan Lal does not lay down that if a workman has worked for more than 240 days in any number of years and if during the year of his termination, he has not worked for the said number of days, he would not be entitled to the benefit of section 25-B. the question with which we are concerned was not under consideration in Mohan Lal's case. If the viewpoint propounded by the management is accepted, then in every year the workman would be required to completed more than 240 days. If in any one year the employer gives

him actual work for less than 240 days, the service of the workman can be terminated without compliance of Section 6N of the UP Act, despite his

having worked for number of years and fore more that 240 days in each year except the last. Such an intention cannot be attributed to the UP Act. In

the present case, as already notices, the finding of the labour court is that the respondents worked for more that 240 days in each year from 1983 to

1986 but not having worked for 240 days in the year of termination the termination was held by the labour court not to be violative of section 6N.

Reference may also be made to the decision in Ramakrishna Ramnath Vs. the Presiding Officer, Labour Court Nagpur and another, where this Court

observed that the provisions requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a

period of 12 calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show

that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the

appellant is wholly untenable. The decision in U.P. State Cooperative Land Development Bank Ltd. Vs. Taz Mulk Ansari & Others, 1994 Supp. (2)

SCC 745, relied upon by learned counsel for the appellant has not applicability since that was in a case of clause (a) of Section 6N and therefore,

Section 2(g) had not relevance.

12. The High Court has rightly concluded that the termination of the respondents was in violation of Section 6N read with Section 2(g) of the U.P.

Act.â??

8. The ratio of Apex Courtâ??s judgment is fully covered with facts and circumstance of the case as the labour court has itself recorded a finding

that in the previous years both petitioners have worked for more than 240 days and they have been continuously engaged from 1985. Therefore, the

termination order of the petitioners was in violation of Section 6-E of the Act to which the labour court has not adverted to as the case Act No. 504 of

1990 was pending before the Reconciliation Officer, Deputy Labour Commissioner.

10. The order of termination passed in violative thereof is ab initio and the relationship of master and servant does not snap.

11. Accordingly, the writ petition is allowed. The impugned award dated 30.08.1997 as well as the order of removal dated 13.10.1990 are set aside.

The petitioner shall be reinstated in service, however, they shall not be paid any back wages.â??

This Court held that termination order dated 13.10.1990 was in defiance to the provisions of 6N of Industrial Disputes Act. Case of the petitioner is

that immediately after the judgment by this Court, he sought compliance of it. Respondent avoided to comply and had filed review at belated stage

which too was dismissed on 25.05.2006. Thereafter, petitioner contends to file representation along with other incumbent who was party in the writ

petition on 19.07.2006, which was responded by the opposite party that matter has been referred to State for direction on 22.07.2006. Admittedly, this

letter dated 22.07.2006 is by Executive Engineer, Irrigation Division Rudraprayag after creation of State. Both the employees submit that they had

again represented to respondent No. 3, for compliance on 29.08.2006 and 30.08.2006.

The respondents, preferred a Review Petition, being Review Application No. 17 of 2006, which too stood rejected by this Court by an order dated

25th May, 2006 on the ground of delay. As per the records of the writ petition, against the judgment of the learned Single Judge dated 28th July, 2005

and the order of review dated 25th May, 2006, the respondents preferred an SLP before the Honâ??ble Apex Court, which was later on numbered

as Civil Appeal No. 6501 of 2009. The Apex Court had granted four weeks to take steps as last opportunity by its order dated 11.05.2016. The State

was granted time for taking steps for serving the respondents but on account of failure by State to take steps for services, the SLP was dismissed and

the said order of dismissal of SLP had attained finality.

After the dismissal of the SLP by Honâ??ble Apex Court on 11th May, 2016, it is the case of the petitioner that he was supplied with the information

of the dismissal of the SLP by the Supreme Court Legal Services Committee only on 19th July, 2017. After having learned about the dismissal of the

SLP, he filed his representation on 4th August, 2017, seeking compliance of the judgment rendered by this Court on 28th July, 2005, as a consequence

of which, his termination order was set aside and it was expected that the petitioner was to be adorned back to the same status as it existing on the

date of termination dated 13th October, 1990. The representation of the petitioner has been decided by an order dated 6th October, 2017, Annexure 10

to the writ petition, whereby, the Executive Engineer has observed that no action is required to be taken at their end on the said representation. Hence, the present writ petition.

It goes without saying that the litigant who has been pursuing his remedies before the Court of Law ever since 1998, when he invoked the writ

jurisdiction challenging the award passed by the Labour Court, against his order of removal dated 13th October, 1990 and when he had ultimately

succeeds by the judgment of this Court on 28th July, 2005 rendered by this Court and when the same stands affirmed by the Honâ??ble Apex Court

with the dismissal of the Civil Appeal of the respondents, logically and under law, the petitioner would acquire the same status as prevailing on the date

of removal as if there was no order of removal at all against him and hence, he would be entitled for the benefit which has accrued to him due to the

sufferance of his on account of the wrongful action of removal from services by the respondents which has been otherwise declared as illegal by the

judgment of this Court dated 28th July, 2005. The manner in which, the authorities have proceeded to keep the petitioner litigating before various

Courts without complying the order, despite being conscious of the fact that there happens to be a judgment dated 28th July, 2005, and that of the

Honâ??ble Apex Court dated 11th May, 2006, more particularly, when it was rendered in the proceedings which was initiated at their behest, it

shows that the respondents were consciously and with a deliberate intention to harass the petitioner avoided the compliance of the judgment dated

28th July, 2005. Even so much so, when the petitioner has submitted the representation, the Executive Engineer has passed absolute vague order

without assigning any reason and without considering the case of the petitioner as reflected by the judgment dated 28th July, 2005. Apparently, the

attitude of the respondents derogates the order dated 28th July, 2005 as well as the order of the Honâ??ble Apex Court. As such, the Executive

Engineer is directed to appear in person on 18th June, 2018 to show cause as to why a suo moto contempt proceedings may not be drawn against him

for unnecessarily keeping the litigation alive when as a matter of fact, the petitioner has otherwise won over his case upto the Apex Court.

The respondent No. 3 is bound by the judgment because at the time when the writ petition was filed before the Allahabad High Court against the

award, the respondents No. 3 was impleaded therein, happens to be the Executive Engineer, Irrigation Division, Rudraprayag who was the appointing authority of the petitioner. After on the transfer of the Writ Petition, under Section 35 of the Re-organisation Act, it will not change the status of the appointing authority and the Executive Engineer, Rudraprayag will still continue to be the appointing authority of the petitioner. The argument of Mr.

C.S. Rawat, Addl. C.S.C. to the effect that the petitioner was appointed by the State of U.P. and his services were terminated by the authority of

State of U.P. is absolutely a misconceived argument, the reason being that once the appointing authority happens to be a Divisional Level Authority

under the terms of Re-organization Act itself, he will continue to be an employee of the State of Uttarakhand under various government orders issued

from time to time.

There is another aspect of the matter, when on transfer of this writ petition from Allahabad High Court, the writ petition was argued finally on 28th

July, 2005, the respondent No. 3 was represented by the State of Uttarakhand through their Standing Counsel. At that point of time, if at all, there was

any genuineness in the argument of learned Addl. C.S.C, the said objection ought to have been raised at that stage which apparently was not taken.

After the judgment rendered on 28th July, 2005 and having been challenged before the Apex Court by respondent No. 2, i.e. Chief Engineer, Irrigation

Department Uttarakhand, Dehradun who is an authority of Uttarakhand after its creation and has attained finality, this Court cannot scrutinize the

veracity of the judgment dated 28th July, 2005 and it has to be complied with by the appointing authority, though in terms of the judgment whosoever

acquires the power after the re-organisation of the State.

Put up this matter 18th June, 2018 for personal appearance of respondent No. 3.