
(2009) 05 AHC CK 0296
In the Allahabad High Court

Rais Ahmed

APPELLANT

Vs

State of U.P.and others.

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0296

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Allowed

Judgement

Ashwani Kumar Singh, J.

Heard the learned counsel for the appellant Smt. Yogita Chandra and Sri Mukund Tewari learned Additional Chief Standing Counsel.

Assailing the order, passed by the learned Single Judge in the writ petition preferred by the appellant, it has been argued that the controversy involved in the petition was regarding validity of termination of the appellant from service, which had been passed in the year 1992 but the learned Single Judge instead of considering the said case, has dismissed the writ petition on the ground holding that since the appellant was not in service, therefore, his services cannot be regularized nor he can be considered for regularization under the Government order dated 7.2.1997.

We have gone through the writ petition. We find force in the argument of the learned counsel for the appellant that in fact challenge was made to the termination order which was passed in the year 1992 and in the said writ petition, which was filed well within time, just after exchange of the affidavits between the parties, the order under challenge in the appeal has been passed, therefore, the question whether the appellant was legally discharged from service or not, has not been considered nor the attention of the learned Single Judge was drawn on the issue of termination.

Under these circumstances, the matter normally has to be remanded to the Court having jurisdiction to decide the said writ petition but considering the plea

of the State counsel that the appellant can seek his remedy before the labour Court, as apparently the appellant has taken a plea that the termination of the appellant is in violation of section 6 (N) of the U.P. Industrial Disputes Act and also considering the fact that when a specific remedy is available to the appellant, this Court would be reluctant in entertaining the writ petition particularly when the same has already been dismissed. Remanding the matter to the learned Single Judge would again mean pendency of the writ for indefinite period.

Smt. Yogita Chandra, however, submitted that if liberty is given to the appellant to approach the Labour Court then the instant appeal may be disposed of accordingly.

We, while disposing of the the appeal set aside the order dated 9.4.2009 passed by the learned Single Judge. Though we have set aside the order dismissing the writ petition but on the ground of availability of statutory remedy, give liberty to the appellant to approach the labour court for seeking the remedy.

The special appeal is accordingly allowed.