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**(2002) 04 AHC CK 0061**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 7133 of 1995**

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| Rajya Krishi Utpadan Mandi Parishad and Another                         | APPELLANT  |
| Vs                                                                      |            |
| Prescribed Authority, Industrial Tribunal (V), U.P., Meerut and Another | RESPONDENT |

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**Date of Decision :** 12-04-2002

**Acts Referred:**

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

**Citation :** (2002) 2 AWC 1637 : (2002) 93 FLR 1084 : (2002) 2 UPLBEC 1745 : (2002) 2 UPLBEC 1475

**Hon'ble Judges :** Anjani Kumar, J

**Bench :** Single Bench

**Advocate :** B.D. Mandhyan, for the Appellant; Shyam Narayan, S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Anjani Kumar, J.—By means of the present writ petition under Article 226 of the Constitution of India, employer-petitioners have challenged the award passed by the Labour Court (V), U. P., Meerut dated 20.4.1991. Annexure-1 to the writ petition.

2. The facts leading to the filing of present writ petition are that the State Government vide its order dated 25.5.1990 referred the following dispute to the Industrial Tribunal (V) U. P., Meerut. which reads thus :

"Whether the termination of services of workman Sri Brijendra Singh son of Sri Kale Singh, by the employer w.e.f. 18.2.1989, was legal and valid? If not what relief the concerned workman is entitled and from which date etc.?"

3. The labour court after exchange of the pleadings, written statements and evidences framed the following two additional issues :

"(1) Whether the workman is covered with the definition of workman under U. P. Industrial Disputes Act. 1947, if so then its effect? ; and

(2) Whether the employer is covered with the definition of industry, if so then its effect?"

4. The labour court after going through the materials available on record has recorded findings on both the additional issues against the employer and has held that the concerned workman is covered by the definition of workman and the employer is covered by the definition of industry. In view of the findings recorded by the labour court on the additional issues that the workman concerned is covered by the definition of workman under the Act, the stand of the employer that since the workman concerned was employed on daily wages in employment which begins of the beginning of the date and automatically comes to an end of the close of the day and therefore the termination of the services of the workmen concerned would not be covered by the definition of retrenchment u/s 2(oo) (bb) of the Act. Sri B.D. Mandhyan learned counsel appearing on behalf of employer-petitioners has relied upon a decision of five Judges" Full Bench of this Court passed in Writ Petition No. 1910 of 1981, Hindustan Sugar Mills Ltd. v. State of U. P. and Ors. decided on 20.5.1992, wherein the Full Bench has held that "within such period" does not cover by the U. P. Act, the provisions of Central Act will apply. The provision of Section 2 (oo) (bb) has been introduced in the Central Act by the amendment of 1984. At the time of the amendment, amended definition, which has been introduced by the amending Act of 1984, was not covered by the existing U. P. Act, thus by virtue of the proviso of Article 252(2) of the Constitution of India, the U. P. Act becomes the existing law and the Central Act as amended in the year 1984 would be the amending Act. The law introduced by the Parliament since both the Central and U. P. Act covers the same field, it is the Central Act as amended in the year 1984, whereby the definition of retrenchment has been amended would prevail, therefore the contention of the employer that the Central Act would not prevail over the U. P. Act and it is the U. P. Act which will prevail is not acceptable.

5. Learned counsel for the respondent-workman has relied upon a decision of learned single Judge of this Court in U.P. State Sugar Corporation Ltd. Vs. Presiding Officer, Labour Court and Another, wherein the learned single Judge of this Court has held that Section 6N of the U. P. Industrial Disputes Ac(. 1947, will not be read along with the amended definition of the retrenchment as Introduced by the Central Act when It amended the Section 2 (oo) (bb). Against the aforesaid judgment of learned single Judge. U. P. State Sugar Corporation Ltd. filed SLP before the Supreme Court, which has been clubbed as Civil Appeal No. 6116 of 2000, U. P. State Sugar Corporation Ltd. v. Om Prakash and others, decided on 8.8.2001. The said judgment is in 2001 LLR 1220, wherein the Supreme Court has upheld the Judgment of this Court, referred to above. Learned counsel for the workman has further relied upon a decision of learned single Judge in 2001 (1) UPLBEC 669 , wherein learned single Judge has held that the provisions of U. P. Act will prevail over the provisions of Central Act, in view of provisions of Section 25J, read with Article 254(2) proviso. Learned single Judge has further held that since the workman concerned in the said case had

worked for more than 240 days, his termination without complying the mandatory provisions of Section 6N is invalid and illegal. The another decision relied upon by counsel for the respondent-workman is in State of U.P. Vs. Labour Court, Haldwani and another, wherein the learned single Judge of this Court has found that a daily wager cannot be said to be in continuous employment. Against this judgment of learned single Judge, referred to above, which was reversed by the Supreme Court in the case of Deep Chandra Vs. State of U.P. and Another, para 2 of the judgment is quoted below ;

"2. The High Court approached the matter rather strangely as it went at a tangent to consider not only whether the casual worker's services can be put to an end to but if the award made by the labour court would make him permanent employee, so on and so forth. The High Court lost sight of the point in issue that is, when an employee had put in service for more than 240 days in each year for several years whether his services can be put to an end to without following the procedure prescribed u/s 25F of the Industrial Disputes Act. If there has been violation thereof such an employee will have to be reinstated in his original service on the same terms and conditions in which he was working earlier. If this is the position in law, we fail to understand as to how the High Court could have interfered with the award made by the labour court. We set aside the order made by the High Court and restore the award made by the labour court. The appeal is allowed accordingly."

6. The another decision of Supreme Court relied upon by the learned counsel for the respondent-workman is in State of U.P. and Another Vs. Rajendra Singh Butola and Another, , wherein Supreme Court in para 2 held as under:

"2. In the light of the concurrent finding of facts reached by the trial court as well as by the High Court, it becomes clear that though the appellants contended that the workman was a daily wager and, therefore, the provision of Section 6N of the U. P. Industrial Disputes Act. 1947, did not apply, there is no escape from the conclusion that the workman had worked for four years as clearly established and if he was to be terminated due to any exigencies of service, the procedure for retrenchment was required to be followed. As the condition precedent to such retrenchment was not complied with, the order of reinstatement granted by the labour court could not be found fault with."

7. Similar is the view taken by the Apex Court in the case of Samishta Dube Vs. City Board, Etawah and Another, Learned counsel for the workman has further contended that from the various decisions of the Supreme Court, it is clear that the fact that the workman concerned has worked for more than 240 days in the preceding calendar year having not been disputed and the labour court having arrived at the findings, it becomes mandatory on the part of the employer to complying with the provisions of Section 6N of the U. P. Industrial Disputes Act, 1947, before terminating the services of the workman concerned. Same is the factual position in the instant case wherein the labour court has found and, in my opinion rightly, that admittedly the workman has worked for more than 240 days

in the preceding calendar year and that his services have been terminated without complying with the provisions of Section 6N of the U. P. Industrial Disputes Act, 1947. These findings have not been assailed by the employer-petitioners. That being so. in view of the law laid down, referred to above, T have no option but to hold that the termination of the services of the workman concerned without comply with the provisions of Section 6N of the Industrial Disputes Act. 1947, is illegal and invalid and the workman is entitled for reinstatement with full back wages and continuity of service as neither the employer-petitioners have set-up, nor demonstrated that the workman concerned was gainfully employed elsewhere during the pendency of the proceedings before the labour court.

8. In view of the aforesaid discussions, the instant writ petition has no force and deserves to be dismissed and is hereby dismissed. The interim order dated 31.3.1995 is vacated. However, the parties shall bear their own costs.