
(1989) 09 AHC CK 0008
In the Allahabad High Court
Case No : Writ Petition No. 9128 of 1988

Ram Bilas

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-09-1989

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6J, 6N, 6P, 6Q, 6R
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6J, 6N, 6P, 6Q, 6R
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6J, 6N, 6P, 6Q, 6R

Citation : (1990) 60 FLR 567 : (1990) 2 LLJ 564

Hon'ble Judges : Rajeshwar Singh, J

Bench : Single Bench

Advocate : Umesh Chandra, Krishna Chandra, Rakesh Srivastava and S.K. Singh, for the Appellant; Ashish Narain Trivedi, C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Rajeshwar Singh, J.—The admitted facts are that it was an industry; the employer dispensed with the services of the workman; the workman raised an Industrial dispute; the Industrial Tribunal gave its award holding that the workman had worked more than 240 days in a year when his services were dispensed with and so his services could not be terminated. But the Tribunal did not order his reinstatement and instead ordered that retrenchment compensation be given to the workman. It is against this order that the workman has filed the present writ petition and he prays that his reinstatement should be ordered. It is contested by the employer.

2. The finding of the Tribunal that the workman had worked for more than 240 days in the preceding year has not been assailed and the only argument of the employer is that this period of 240 days was not continuous because during this period his services were extended several times after a break of a few days and his services came to an end automatically after the period provided in his appointment order. Moreover, it has been submitted that the employee should

have been appointed after consultation with Institutional Service Board, while he was not appointed in this manner and was appointed by the Management without being selected by the Institutional Service Board.

3. The term "continuous service" has been defined in Section 2(g) of the U.P. Industrial Disputes Act, 1947. It means uninterrupted service, and includes service which may be interrupted merely on account of cessation of work, which is not due to any fault on the part of the workman. In the case before us it was the employer who made the workman to cease in an artificial manner just in the hope that this may amount to interruption, but it will not amount to interruption as the cessation of work was not due to any fault of the workman. This provision further says that the 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 case before us, there is unassailed finding that the workman actually worked for 240 days. So, it will be deemed that he has completed continuous service of one year.

4. The term "retrenchment" is also defined in clause(s) of the aforesaid Section. It says that retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment by way of disciplinary action. In the case before us, it is not the case of any one that the workman was made to cease as a measure of punishment. So, whatever may be the reason for termination of the service, in the case before us, it was retrenchment of the workman.

5. Regarding retrenchment there are some restrictions, which have been provided in Section 6-N. It says that no workman who has been in continuous service for not less than one year, shall be retrenched by that employer until certain conditions have been satisfied. The first such condition is that the workman has been given one month's notice in writing indicating the reasons for his retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of notice. This condition was not satisfied in this case because neither the workman was given any notice nor he was paid wages in lieu thereof. No doubt, there is a proviso to this clause. It provides that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service. In the case before us, the appointment was for a fixed period-say for three months and thereafter a break of two or three days the workman was again given employment. An agreement is something which signifies that both parties agreed to do something. In the Contract Act it has been said that every promise and every set of promises, forming the consideration for each other, is an agreement. Here, in this case there was no promise or set of promises from the workman and workman did not specifically agree with anything. The simple thing was that the employer, who was in a commanding position, gave employment to the workman and wrote in its order that the employment is for a certain period. It was something unilateral on the part of the employer and that was rather unfair

and unreasonable because in spite of there being work, the employer merely adopted these tactics to deny the benefit of Industrial Disputes Act to the workman. Hence, the present case is not the one in which retrenchment was under an agreement which specifies a date for termination of service. There are many cases when the employer and the employee enter into a contract that the employment is for a fixed term. Such contracts appear to be governed by the proviso, and the present case is not governed by that proviso.

The second condition in Section 6-N is that the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. No such compensation was paid to the workman.

The third condition is that notice in the prescribed manner is served on the State Government. That was also not done.

6. Thus, none of the three conditions laid down u/s 6-N were complied with. The Section clearly says that the workman shall not be retrenched by the employer until he has satisfied these conditions. The word "until" is significant. In the second condition it has been said that compensation is given at the time of retrenchment. Thus, it is clear that before ordering retrenchment these conditions have to be complied with and compensation has to be paid at the time of retrenchment. It will not do if these conditions are complied with subsequently and compensation is given subsequent to retrenchment. Under the circumstances, the order of retrenchment, without complying with Section 6- N, was against statute and, therefore, illegal.

7. The result is that the workman could not be retrenched. Here, I may point out that even if retrenchment is justified in a case and all the conditions, mentioned above, have been complied with, then u/s 6-P the employer has to retrench the workman who was the last person to be appointed in that category unless, for reasons to be recorded, the employer retrenches any other person. It has not been said, that the last person in the category was the workman in question or any reasons were recorded for his retrenchment. Again, we have Section 6-Q. It says that where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for re- employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons. After the retrenchment of this workman, other persons were employed but offer was not made to the present workman. Even if he is retrenched employee, he will have to be re-employed according to provisions of Section 6-Q. Then practically for all purposes a workman cannot be turned out. When he cannot be turned out and he has to be kept in service, it is but necessary that the employer in such cases has to give him all seniority, increments and promotions.

8. Section 6-R says that provisions from Section 6-J to 6-Q shall have effect

notwithstanding anything inconsistent therewith contained in any other law. The result is that these provisions regarding retrenchment and re-employment have to be followed irrespective of what may have been provided in the government orders or other Acts relating to selection of a candidate by the Institutional Service Board. When those Regulations and Government Orders are superseded by this provision of the Industrial Disputes Act, the question whether the workman was initially appointed regularly or irregularly becomes immaterial for the purposes of question involved in this case.

9. The Tribunal was right when it held that workman's service could not have been terminated without giving him retrenchment benefits. But then it fell into a mess of Government Orders and Regulations of the department, little realising that they will not have any effect in view of Section 6-R of the Act. It ordered that the workman be given retrenchment benefits. In fact, retrenchment benefits are given before the order of retrenchment is passed, as pointed out earlier, and giving of retrenchment benefits subsequently could be of no avail. Under these circumstances, the Tribunal should not have ordered that the retrenchment benefits should be given to the workman. It should have ordered reinstatement of the workman with full back wages and other benefits of continuity of service.

10. It may be pointed out that employer in this case is U.P. Co-operative Bank where the State has its say. It is a model employer and it should not rush into litigation unnecessarily. There have been a number of judgments wherein it has been said that if the workman has worked for 240 days, he cannot be retrenched in this manner. But this model employer continues to fall in the same error and contest the cases filed by workmen. It firstly, results in harassment of the workman, secondly, it increases the work of Courts, and thirdly it involves much unnecessary expenditure to the Bank in contesting the case and ultimately in giving salary to the employee who was dismissed, without taking work from him during the pendency of the litigation. Thus, the Bank itself suffers. So, this is high time the Bank should look in all such cases and take a proper attitude saving itself from loss and the workman from harassment.

11. Copy of this judgment shall be sent to the Chief Secretary, U.P., so that if he likes he may ensure compliance of the law by the institutions which are under the control of the State.

12. The writ petition is allowed. The order of Tribunal is modified and it is held that the retrenchment of the workman was illegal, and the employer shall reinstate him and give all benefits to him including back wages, seniority and continuity of service. The employer shall farther pay Rs.750 as costs of this litigation to the workman. A copy of this judgment shall be sent to the Chief Secretary, U.P. Government drawing his attention to the preceding paragraphs of this judgment.