
(2006) 09 AHC CK 0162
In the Allahabad High Court
Case No : Writ Petition No.7816 of 1991 (S/S)

Ram Lal

APPELLANT

Vs

Nagar Palika, Pihani, District Hardoi

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2006) 09 AHC CK 0162

Hon'ble Judges : Shailendra Saksena, J

Final Decision : Allowed

Judgement

Shailendra Saksena, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ, order or direction in the nature of certiorari and mandamus for quashing the part of the Award dated 15.1.1991, copy of which has been annexed as Annexure1 of the petition and for direction for reinstatement of the petitioner with full back wages and pay with interest.

2. Brief facts so far they are relevant for decision of this writ are that petitioner was working on the post of clerk on daily wages since 28.1.1984 and had completed more than 240 days of continuous service. Without complying with the provisions of U.P. Industrial Disputes Act, the services of the petitioner were dispensed with and he was retrenched, but before retrenchment neither written one month's notice was given nor any compensation as required under Section 6N of the Industrial Disputes Act was paid to the petitioner nor procedure laid down for retrenchment was followed.

3. The matter was referred to the industrial Tribunal (respondent No.3), who gave its Award on 15.1.1991, copy of the Award has been filed as Annexure1 of the petition.

4. The Industrial Tribunal in its Award found that at the time of retrenchment dated 19.12.1988, provisions of Section 6N of the U.P. Industrial Disputes Act were not complied with, so the retrenchment order dated 19.12.1988 was illegal

and void and his services could not have been terminated without complying with the provisions of Section 6N of the U.P. Industrial Disputes Act.

5. The Tribunal further had directed that one month's pay in lieu of written notice and compensation on the basis of the total service rendered by the petitioner would be given.

6. The petitioner has challenged this part of the Award and in this connection it has been said that once it has been held that retrenchment order dated 19.12.1988 is illegal and against the provisions of U.P. Industrial Disputes Act, the only course which was left was to order reinstatement, the Tribunal had no powers to order for rectification of the lapses, notice of retrenchment should have been given by the employer in accordance with law, which could have been effective only after expiry of statutory period and, not with effect from 19.12.1988 i.e. the date, on which a termination order was passed. The petitioner had a right to be reinstated from 19.12.1988 with full back wages, he should have been treated to be in continuous service in between 19.12.1988 to the date of retrenchment and till this date services were not terminated in accordance with law. The Scheme in which petitioner was employed still continues and it has not been abolished.

7. I have carefully heard the learned counsel for the parties and have perused the facts; a perusal of the impugned order dated 15.1.1991 copy of which has been annexed as Annexure1, goes to show that the learned Industrial Tribunal had held that at the time of retrenchment, dated 19.12.1988, procedure given in Section 6N of U.P. Industrial Disputes Act were not complied with, and therefore the alleged retrenchment order is illegal and void; the petitioner was in continuous service of 240 days after recording these findings the impugned award has been passed.

8. I find merits in the contention of the learned counsel for the petitioner that once the tribunal had held that the services of petitioner could not have been terminated without complying with the provisions of Section 6N of the Industrial Dispute Act and if petitioner's termination was illegal and void direction normally should not have been given to pay one months salary in lieu of notice and also to pay compensation on basis of total service rendered. No power is vested in the tribunal to give a positive direction to make good the lapses and rectify the lapses in the manner it has been done in the present case by ordering to pay compensation and give pay in lieu of notice. There is difference in termination and retrenchment. The positive act i.e. giving notice to pay one month salary in lieu of notice and compensation on basis of total service rendered by petitioner vested in the employer, the discretion lay with the employers and that discretion could not have been usurped and exercised by the tribunal because in normal course the tribunal should have ordered reinstated with consequential benefits. Termination and retrenchment have different bearing. Section 25F are couched in mandatory form and non compliance therewith has the result of rendering the order of retrenchment void ab initio or nonest and the period of cessation of

work not due to any fault on the part of employee gets calculated as period of continuous service. Overlooking this situation the tribunal itself tried to do what was required to be done by the employer. No such power vested in the tribunal to have been made the arrangement, it has also not been disputed that the scheme/work for which petitioner was appointed still continues, the petitioner has completed 240 days of continuous service. He could have been retrenched, as per provisions of Industrial Dispute Act. The provision should have been applied.

9. I also find merits in arguments of learned counsel of the petitioner that even if a direction was given by the tribunal to pay salary in lieu of notice, the notice to the employee i.e. the petitioner should have been given in accordance with the provisions of the Industrial Disputes Act and that notice could have been effective only from the date of receiving the notice and after expiry of one month and not with effect from 19.12.1988. In the present case no notice was given; only termination order had been passed.

10. Once the order of retrenchment is found contrary to the provisions of Industrial Disputes Act then reinstatement with full back wages is the normal law, but reasons given by the tribunal for not following the above normal law, is in view of facts and circumstances of present case, without any sufficient basis or justification, the scheme in which petitioner was working and was employed has not yet been abolished, either by State Govt. or by the Central Govt.; the retrenchment order was void and illegal; retrenchment could have been made only by following the procedure laid down in the Act itself. The tribunal itself had directed that if any post falls vacant, the petitioner would be given priority for appointment on that post. It has been asserted that several posts are lying vacant on account of retirement etc. etc. but still no appointment was being given to the petitioner. This Court, too vide order dated 13.2.1992 had reiterated the above but still no action yet has been taken by respondents.

11. In view of the above facts the petition deserves to be allowed and is allowed. The direction of the learned Industrial Tribunal in the Award dated 15.1.1991, copy of which has been annexed as Annexure1 of the petition that one month salary in lieu of notice and for payment of compensation on basis of total service rendered by the petitioner and payment of interest at the rate of 12% from 19.12.1988 and not ordering reinstatement is, hereby, quashed. Accordingly it is directed that respondent Nos.1 and 2 will reinstate the petitioner with full back wages and will pay the same, with effect from 19.12.1988 to the date of reinstatement with 12% per annum interest as per rules.

(Petition allowed)