

(2018) 03 UK CK 0032
In the Uttarakhand High Court
Case No : Writ Petition No. 54 of 2010 (M/S)

RAM SARAN SINGH

APPELLANT

Vs

WILD LIFE INSTITUTE OF INDIA AND ANOTHER

RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Constitution of India, — Article 227
Industrial Disputes Act, 1947 — Section 2A, 2(j), 25F, 25G, 25H
Industrial Disputes Tribunal Act, 1967 — Section 25F

Citation : (2018) 03 UK CK 0032

Hon'ble Judges : SHARAD KUMAR SHARMA, J

Bench : Single Bench

Advocate : A.K. Arya, Rakesh Thapliyal

Final Decision : Partly Allowed

Judgement

Â The petitioner had preferred the instant writ petition by invoking Article 227 of the Constitution of India for scrutinizing the propriety of the award

dated 30th September, 2009, as passed by the Central Government Industrial Tribunal-Cum-LabourÂ Court, Lucknow, inÂ Adjudication Case No.

11 of 2004, between Shri Ram Saran Singh Vs. the Director, Wild Life Institute of India, which is said to have been notified by the Central

Government on 22.10.2009.Â The petitioner apart from seeking the above relief has also sought a relief in the nature of mandamus, commanding the

respondents to reinstate the petitioner into the services on the post of Field Assistant, with full back wages, and all consequential benefit and with the

regular status w.e.f. the date of his termination i.e. 30.09.2000 and further also to regularize his services and to pay the regular salary,Â whichÂ isÂ

beingÂ Â paidÂ toÂ Â otherÂ Â similarlyÂ Â situatedÂ employees of the respondents.Â Â

The brief narration of facts of the case as made out by the petitioner in the writ petition, was that he contends that he was inducted with the

respondents as a Field Assistant and has been working in the said capacity ever since his date of induction, i.e. 01.10.1991 and had worked for a

considerable long period with the respondents, but he was deprived of the benefits as admissible to the regular employees, i.e. the pay scale and other

ancillary service benefits payable to an employee in lieu of services rendered were not being extended to the petitioner.Â Consequently, according to

the petitioner, in order to press his legitimate claim, he is said to have instituted a Writ Petition, being Writ Petition No. 48195 of 1999, before the High

Court of Judicature at Allahabad.Â The Coordinate Bench of the Allahabad High Court, vide its order dated 22nd November, 1999, observed that

since the petitioner is still in service on daily wage basis and as he has claimed for regularization, which is still pending at that point of time, the

respondents were directed to pay minimum wages / salary, as payable to the regular employees performing the similar duties.Â Â

It is the case of the petitioner, that with a deliberate move and with a malicious intention for avoiding the compliance of the direction issued by the

Allahabad High Court vide its order dated 22.11.1999 passed in Writ Petition No.48195 of 1999 to pay minimum wages as was being paid to the

regular employees, performing the same duties, the respondents proceeded to terminate the services of the petitioner w.e.f. 30th September,

2000.Â Â

The contention of the petitioner is that the action of the respondents of terminating the services of the petitioner w.e.f. from 30th September, 2000,

was not legally tenable on account of non-compliance of Section 25-F of the Industrial Disputes Act, 1947, as 30 days mandatory notice in writing,

required to be given prior to dispensing the services of the petitioner as Field Assistant was not provided and also that he was not heard prior to the

passing of the order, despite the fact that the respondents were conscious of the fact that the petitioner has worked as Daily Wager ever since 1991

i.e. from the date of his respective appointment.Â

Questioning the veracity of the order dated 30th September, 2000, the petitioner had preferred a Writ Petition before the Division Bench of this Court,

being Writ Petition No. 107 (S/B) of 2002.Â At the initial stage, when the writ

petition was being heard on admission, this Court passed an interim order on 21st March, 2002 to the following effects:-

“In the meanwhile, it is provided that the petitioners shall be allowed to continue in the Employment as Field Assistants and they will be paid minimum of pay scale subject to decision of writ petition.”

The said Writ Petition was taken up ultimately on 16th May, 2002, and the Division Bench of this Court, vide its judgment/order dated 16th May, 2002, had dismissed the writ petition on the ground that the petitioner has got an alternative remedy available to him under the Industrial Disputes Act, 1947.

It is the case of the petitioner that after the dismissal of the Writ Petition on 16th May, 2002, on the ground of availability of alternative remedy he had moved an application before the Assistant Labour Commissioner (Centre), Dehradun, whereby, by his application dated 23rd September, 2002, he had invoked Section 2-A of the Industrial Disputes Act, 1947, praying for, to draw a conciliation proceeding taking into consideration the fact that he has worked consistently, since 1st October, 1991, as a Daily Wager and that since he had been removed / terminated from the services on 30th September, 2000, without complying with the provision of 25-F, all actions taken thereafter by the respondents would be violative of Section 25-F, 25-G, and 25-H of the Industrial Disputes Act.

The application for conciliation, as submitted by the petitioner, was opposed by the respondents on the premise that there was no occasion for them to comply with the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, for the reason that according to the respondents, the provisions of Industrial Disputes Act could not be invoked because the respondents contended that they do not fall within the ambit of the definition of the “Industry”, as provided under Section 2 (j) of the Industrial Disputes Act. Though tentatively, at this stage, this objection taken by the respondents to the application under Section 2 (A), as filed by the petitioner for drawing the conciliation proceedings, which was being opposed by the respondents under the pretext of their status not being that of Industry under Section 2 (j), would run contrary to the order of the Division Bench dated 16th May, 2002 passed in Writ Petition No.107 of 2002, where the Division Bench has dismissed the writ petition on the ground of availability of

alternative remedy for seeking a remedy available under the Industrial Disputes Act, 1947.Â Meaning thereby, it would amount that the Division

Bench, itself, has held that the petitioner since was a workman and he had an alternative remedy under the Industrial Disputes Act, since the said

order has not put to challenge by the respondents before any other superior forum questioning its propriety and the competence of the Industrial

Tribunal, it ought not to have been ruled out, thus the respondents would be estopped from questioning the jurisdiction of the Tribunal under the pretext

of Section 2 (j), till the order of Division Bench dated 16th May, 2002, continues to survive in the eyes of law, because it is by virtue of said order that

the respondents had taken the benefit of dismissal of the writ petition of the petitioner where he has challenged the order of termination dated 30th

September, 2000.Â

Â On the said basis and after exchange of the pleadings at the stage of Section 2 (A) for drawing the conciliation proceedings, the Labour Court

passed an order on 25th February, 2003 as well as the order dated 28th February, 2003, wherein, it was held that the dispute between the petitioner

and the respondents emanating from the order of termination dated 30th September, 2000, could not be resolved amicably and, thus, held that the

conciliation efforts made on 25th February, 2003 has failed.Â Â It was further observed in the order that the petitioner did agree for settlement of the

dispute on the basis of arbitration, but, since the respondents did not have inclination for resolving of dispute and as the Management declined to settle

the controversy against the order of termination dated 30.09.2000, by declining to participate in the arbitration proceedings, the reference of dispute for

adjudication became imminent.Â Â

Â As a result of failure of conciliation, the matter was referred to the Central Government and the reference was made by the Central Government

on 14.01.2004 to the Central Government Industrial Tribunal-cum-Labour Court for adjudication of the dispute.Â Â Â The following question of

reference was framed by the learned LabourÂ Court :-

â??Whether the action of the Wild Life Institute / ManagementÂ in terminating the services of the workman / Ram Saran Singh S/o Mam Chand

w.e.f. 30th September, 2000, instead of regularizing is legal and justified ? If not, what relief, he is entitled to.â??

Â As a consequence of the reference made by the Government of India, the proceedings were initiated by the Labour Court, which was registered as

I.D. Case No. 11 of 2004, and it was referred to be decided by the competent Court at Lucknow, Camp Dehradun. The petitioner on initiation of the

proceedings before the Central Government Industrial Tribunal had filed his written statement on 9th February, 2004.Â Similarly, while denying the

statement of the claim of the workman, the employer is said to have filed his written statement on 7th April, 2004.Â Â

Â The stand taken by the respondents in their objection and pleadings were to the effect that since the respondents being an autonomous institution,

under the persuasive control of Ministry of Environment and Forest, Government of India, and as it is registered as a Society under the Societies

Registration Act, 1860, under the garb of the aim and objectives as provided in the bye-laws of the respondent Society, the sole ground of challenge to

the proceedings before the Labour Court was that the respondents do not fall within the definition of Industry under Section 2 (j), hence, they

contended that the reference itself made was not tenable.Â

Â Another ground of defence which was taken by the petitioner in his written statement was that looking to the length of service which has been

rendered by him since 1991 as he has already completed 240 days of service, hence, his services could not be dispensed with without a prior notice,

the action as being violative of Section 25-F of the Act is bad in the eyes of law.Â Â The petitioner had also taken a plea before the Centre

Government Industrial Tribunal to the effect that the action of the State and its agencies, is arbitrary for the reason that certain Daily Wagers, who

were junior to the petitioner, their services had already been regularized and his non-regularization is based on arbitrariness.Â Whereas, on the other

hand, the stand of the respondents was that apart from the legal plea of their status of not being that of Industry, they submitted that there never

existed relationship of employer and employee, as they were not even engaged on the temporary basis, as they had been employees under the projects

where they were required to work under the Research Scholars and thus, there happens to be no direct lien and relationship of master and servant

between the petitioner and the respondents.Â Â

Â In addition to the pleadings raised in the written statement, the respondents

also submitted that the Institute is not engaged in any industrial activities and their action which has been taken cannot be nomenclature or classified to be as economic and commercial venture.Â What they tried to submit is that as a matter of fact they are not aiming to produce or distribute the services which could meet the consumersâ?? requirement to bring them under definition of â??Industryâ??.Â

Â The respondents also submitted that ever since the induction of the petitioner, he has been working in the project alongwith Research Scholars, who are undertaking the research work in Rajaji National Park and, since their project was funded externally, the engagement of the petitioner as a Field Assistant was dependent upon the work given to the researchers assisted in the project relating to the research work and was not having any effect of independent appointment, hence petitioner has no claim which could be sustained. There had been rebuttal and counter rebuttal to the pleadings between the parties.Â Â

Â In support of his contention, the petitioner has appeared in the witness box led his evidence and has recorded his statement on 26th October, 2004 and almost reiterated the stand taken in the written statement pertaining to the propriety of his appointment, in which, he stated that an equal treatment has not been meted out to him as compared to the other Field Assistants whose services were already regularized by the respondents.Â

Â In support of his contention, the petitioner has filed various documents to show that ever since 1991, he has been consistently working satisfactorily with the respondents and owing to the length of service as he has already completed 240 days of service, hence, his services could not have been dispensed with without serving him with the notice under Section 25-F of the Industrial Disputes Act.Â Â

Â To support the stand taken by the petitioner in the written statement as well as in the affidavit filed on 5th January, 2006, to show his continuity and effective dispensation of services to the satisfaction of the Researchers, under whom the petitioner was required to work, he has placed on record the document, for example, the copy of letter dated 20th April, 1999, issued by Senior Faculty, Coordinator AJT John Singh, wherein, he has certified that the petitioner has assisted him in the project assigned to him and about the expertise which the petitioner had in the technical aspects of the research

work undertaken by him.Â

Â The petitioner further had also filed the letter dated 24th October, 1997, which too, discloses the fact that the petitioner was under the employment

of the respondents since 1991, and had been working regularly and satisfactorily, without any break and thus, he was entitle for the benefit of

regularization and regular salary.Â The action of the respondents of dismissing the services of the petitioner by the impugned order of dismissal dated

30.09.2000 under challenge before the Tribunal, would also create a bar against the respondent for their action on account of the fact that as per the

letter issued by the Director, Wild Life Institute of 6th July, 1998, wherein, while certifying the fact that the petitioner alongwith other such Field

Assistants have been working with them.Â He has further observed and admitted the fact that the services of some of the Field Staff have been

regularized and rest of the staff, whose name find place in the letter dated 6th July, 1998, their services would be regularized in due course.Â This

letter includes the name of the petitioner which finds reference at S.No. 5.Â Â

There happens to be another letter dated 16th November, 1999, yet again, issued by Dr. S.P. Goel, one of the officers of the Wild Life Institute who

was working there as a Scientist (F Category) who had given the name of the petitioner and such other Field Assistants who have been working under

various projects being conducted by the Research Workers. There are various other correspondences which had taken place between the Scientist (F

Category), Dr. S.P. Goel and department, which shows that the petitioner was conferred with various responsibility to be discharged by him in the

course of his working and the letter of Dr. S.P. Goel and Mr. G.S. Rawat show the manner in which shifting of the duties of the petitioner has taken

place from one place to another.Â Â

It is not only this, it is also established that ever since 1991, when the petitioner was initially appointed as Field Assistant till the date of passing of the

impugned order of terminating the services of the petitioner on 30th September, 2000, invariably, all the researchers and the Project Officers under

whom the petitioner has worked had rather appreciated the services rendered by him and the expertise which he possesses and the valuable

contribution made by him in the research work.Â Â Â Â

Â In the proceedings, before the Central Government Industrial Tribunal, the

respondents are said to have produced one of the researchers, Mr. AJT

John Singh and Scientist (F Category), Dr. S.P. Goel, an officer working with Wild Life Institute of India in support of their contention who submitted

that the petitioner has been working ardently under various projects since 1991 and has given a valuable contribution.

On scrutiny of the witnesses which were adduced by the respondents for substantiating their case before the Central Tribunal, even on its judicious

scrutiny, rather it supports the stand taken by the petitioner to the effect that he has worked for over 240 days and that he was required to be meted

out with identical treatment as has been extended to the other Field Assistants, identically placed.

In lieu of services rendered, the petitioner has been paid salary / wages and pay slips / receipts with regards thereto, have been issued in his

favour. On this defence, the respondents' stand before the Tribunal was that the payment which is made by way of salary or the wages to the

Field Assistants, like that of the petitioner, as a matter of fact, it was not a payment which comes from the coffer of Wild Life Institute, but, it was

rather payment which has been made by the researchers under whom they were directed to work. All those documents lead to an unflinching

conclusion that at least the petitioner had worked for over more than 240 continuous days in a calendar year irrespective of the fact as to from

whichever source salary was paid to him & hence, the respondents were bound to comply with the provisions as contained under section 25-F, by

giving 30 days' prior notice before dispensation of services of the petitioner who by that time had already worked for almost about nine

years.

Looking to the backdrop as it has been reflected from the record and the evidence, both documentary and oral and also from the respective case as

pleaded by the parties before the Tribunal, what is reflected is that :-

1. That the petitioner has worked since 1991 as a Daily Wager Field Assistant.
2. His work and conduct has been found to be satisfactory by the Researchers.
3. The oral statement of the respondents' witnesses show the continuity of service rendered by the petitioner from his date of appointment as such, i.e. since 1991.

4. The certificate of experience and appreciation simultaneously show the work done by the petitioner was satisfactory and unblemished.Â

5. The receipts of wages which were placed on record, it goes without saying that the petitioner did work with the respondents for above 240 days.Â

Under the procedure as followed by the Field Assistants working on a daily wage basis, they are required to maintain a field diary for the nature of

work which they have performed with a particular researchers and, on scrutiny of the diary, which was also placed on recordÂ as evidence before

the Central Industrial Tribunal, it shows that in view of the entries made therein, which was subsequently verified by the respondents and taken as

basis for the purposes of making payment of salary / wages that the petitioner shows that petitioner did work continuously for over 240 days.Â

Another conduct of the respondents which also creates a doubt on their fairness and propriety of their stand taken before the Tribunal about there

dealing with various Field Assistants working with them, is established because of the fact that there had been certain Field Assistants who were

identically discharging their duties in the same fashion as that which was being done by the petitioner and they have been accorded service benefits

and regularized whereas the petitioner has been deprived of the same and has been treated arbitrarily.Â

It is an absolute irrational logic, which has been sought to be relied by the respondents in the case of petitioner, pertaining to the issue of continuity of

service on the ground that the salary receipts on which the petitioner has placed reliance to show the continuity of service, they had tried to submit that

those receipts cannot be treated to be receipt of salary which has been issued from the accounts of Wild Life Institute and, hence, on that pretext,

they submit that the petitioner cannot be treated as to be their employee as he was not receiving any salary / wages from them and in the absence of

the same, there would not exist any relationship of master and service.Â Â

The basis of this stand of the respondents is the petitioner was paid salary / wages by the researchers themselves, but, there happens to be another

fact which could be borne out from the record that even the payment which has been made by the researchers that was verified by Dr. S.P. Goel,

Scientist (F Category) who was one of the responsible officer of the respondents.Â Â Â

It has also been the case of the petitioner in the proceedings before the Industrial Tribunal that rather the period of service rendered by the petitioner in the preceding years has not been brought to the knowledge of the Tribunal, itself and the same was done with an ulterior motive. The petitioner also submits that the receipts of salary from the month of October, 1997 to August, 1998, are self-explanatory in itself, because it was only on the instructions of the respondents that he had gone to render his services and in lieu thereof he was paid salary.

The respondents, even according to their stand taken in the Writ Petition No. 107 of 2002, when the Director, Wild Life Institute has opposed the petition contending the petitioner to be a workman and has a forum available under the Industrial Dispute Act, it had rather admitted the status of the Wild Life Institute as to be that of the industry.

Furthermore, when in any organization where research work is the prime work and is involved in augmenting the objective of protection of wild life, which forms part of Entry 17-B of concurrent list, and that too when the said research work happens to be in collaboration between employer and employee and with its enforceability being ensured by researchers, the employer despite of the fact that being an organization involved in the research work and it may be having separate entity, but in the eyes of the law unlike the various other commercial industries and business activities, yet the same would be regarded as to be an organization and an industry on account of the fact that it is being systematically managed on an inter-se cooperation, between the researchers and the workman and the organization itself enforcing the projects of the organization through the researchers.

Such a work involves innovations, inventions and discoveries which will result into the benefiting the public at large and also the nation and in particular the wild life and would always fall to be within the purview of an industry.

On an overall scrutiny of the factual backdrop and the evidence, the controversy which is now required to be considered by this Court, boils down on two major issues :-

1. As to whether their existed relationship of employer and employee and,
2. Whether the petitioner has worked as a workman for a period of 240 days in the preceding 12 months which is the condition precedent under the law.

3. As to whether the act of the respondent of dismissing services of petitioner violated under Section 25-F of Industrial Disputes Act.

At least, at this stage two status which are very clear are one that the respondent is an industry and admittedly the petitioner is a workman.Â For the

purposes to determine as to whether there existed a relationship of employer or employee, it has been a consistent stand taken by the Director, Wild

Life Institute in the writ petition, as well as, before the Labour Court to the effect that the petitioner was engaged as a Casual Field Assistant in 1991

to assist research work, meaning thereby, at least, the induction of petitioner is said to have been made by the Director is an admitted fact.Â The

purpose and the places where they have to discharge the work is an another aspect which too was regulated by respondent, it was not the choice of

researchers and petitioner with whom he had to work as Field Assistant. In the absence of there being a contract to the contrary in the appointment,

there was no termination of services as a Daily Wager Field Assistant which could be said that it was co-terminus to the Project attached to the

research workers.Â Thus, the Labour Court observed that the projects being carried out by the Wild Life Institute was the project which was under

the control of the Institute, which was being effectively supervised by them reflect the control of respondent on functioning of Field Assistant and

researchers.

The view taken by the Labour Court for not accepting the contention of the petitioner that he is a workman of the respondents, is merely on the

premise that the petitioner had not filed any original documents to support his contention.Â Non filing of original documents will not create any

impediment, more particularly, when the stand of the Director taken in the writ petition as well as in the affidavit filed it is admitted fact that the

petitioner was engaged as a Daily Wager by the Wild Life Institute, though he worked with the researchers. This leads to an inference that there

exists a relationship of employer and employee between the petitioner and the respondent. And also because of the fact that salary bills of petitioner

was verified by the officers of the respondents.

The scrutiny of the statement made by the respondentsâ?? witnesses, wherein, they have made an effort to deny that the petitioner is a workman in

the Institute and alleging that he was a casual labour in the Institute and not a

Daily Wager and was not paid wages by the Institute itself is contrary to the stand taken by the Director in the writ petition before this Court when a plea of alternative remedy was raised for seeking an appropriate direction to the petitioner to approach the Industrial Tribunal.Â The Labour Court has mis-read the two letters which were admittedly written by Dr. S.P. Goel, the Scientist (F Category), i.e. the letter dated 15th November, 1999 and 16th November, 1999 addressed to the Director, National Parks, who was also a management witness who admits that the petitioner was working and was having an effective participation in the work of the Wild Life Institute.Â

In that view of the matter, the writ petition partly succeeds and is allowed.Â The impugned award dated 30th September, 2009 is quashed.Â The termination order dated 30/09/2000, is set aside since having been issued in non compliance of Section 25â€F of the Industrial Disputes Tribunal Act, 1967.Â However, since, apparently the petitioner has not worked from 1st October, 2000, onwards till the date of passing of the present judgment, he would not be entitled for any backwages as there cannot be any salary for the period for which he has not worked and rendered his services.

Subject to the above observation, the writ petition partly stands allowed. The respondents are directed to reinstate the petitioner into services forthwith as Field Assistant and pay his salary regularly thereafter.

Subject to above, writ petition succeeds partly.

No order as to costs.Â Â Â Â