
(2017) 03 AHC CK 0130
In the Allahabad High Court
Case No : Writ A No. 9379 of 2017

Rambali Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), Section 25N
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2017) 4 ADJ 325 : (2017) 2 AllWC 2131

Hon'ble Judges : Abhinava Upadhyaya, J.

Bench : Single Bench

Advocate : Yogesh Kumar Sinha, Ravi Kiran Jain, Advocates, for the Petitioner;
A.S.G.I, Rajesh Kumar Jaiswal, Santosh Kumar Mishra, Advocates, for the
Respondent

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.—Upon agreement between the counsel for the parties, the writ petition is being finally disposed of at this stage.

2. By means of this writ petition, the petitioners have come to this Court challenging various orders passed terminating their services as workmen working with the Food Corporation of India. Such orders have been passed in respect of all the petitioners individually and filed as Annexure-33 to 96 to the writ petition.

3. It is submitted that prior to passing of the aforesaid order, a show cause notice was issued on 9.01.2016, which has been filed as Annexure-2 to the writ petition. It is not disputed that such show cause notice was given individually to all the petitioners.

4. The brief facts of the case are that the Food Corporation of India has various warehouses. One such warehouse is at Kosi Kala, District-Mathura. For the works at Kosi Kala Warehouse, according to earlier practise labours were engaged through contractors. This practise continued for several years. In 1994, the

contract labour system was abolished in this unit. A dispute was raised by various Unions that those labours, who were earlier working on contract basis, should be re-employed by the FCI under the direct payment system and regularized with the FCI. Various lists were prepared as to who were the actual workers. No consensus could be arrived at even upon the list so prepared by the Food Corporation of India. The list was doubted by the Labour Unions and a Writ Petition being Writ Petition No.22652 of 1998 was filed where the contesting parties contested the matter. The Court finally disposed of the writ petition with the direction to the Assistant Labour Commissioner (Central) to enquire into the genuineness of the labours, who were actually engaged with the Food Corporation of India on contract basis and decide after considering the claims of all concerned. This order was passed by judgment and order dated 9.9.1998, which was challenged by means of a Special Appeals being Special Appeal No.873 of 1998 and Special Appeal No.835 of 1998 as well as Special Appeal No.874 of 1998, (FCI Mazdoor Sangh and another v. Food Corporation of India and others. The Division Bench in the aforesaid Special Appeal refused to interfere with the judgment of the learned Single Judge and held that the Single Judge has already directed the parties to appear before the Assistant Labour Commissioner with regard to genuineness of labours, who were actually working on contract basis earlier under the contract system. However, this Court extended the date of appearance before the Labour Commissioner by judgment and order dated 30.11.2006. Pursuant to the aforesaid judgment, it appears that the Assistant Labour Commissioner finalized the list of 166 genuine labours, who were earlier engaged on contract basis, by order dated 20.6.2007 filed as Annexure-26 to the writ petition. While determining 166 labours, it held that these were the genuine labours, who were earlier employed with the FCI on contract basis. The list, which was initially arrived at between the workers Union and the FCI was 316. After much negotiation, the workers Union arrived at a number of 250. Out of 250, 210 were handling labours and 40 ancillary labours. The Labour Commissioner considering all the aforesaid list and various directions issued by the Courts as well as claims raised by other persons came to the conclusion that these 166 Labours alone were genuine labours. The order of the Labour Commissioner dated 20.6.2007 was challenged by various writ petitions and various Special Appeals were also filed and the matter went up to the Supreme Court where also the SLPs were all dismissed and no error was found in the list prepared by the Assistant Labour Commissioner.

5. It is to be noted that the FCI also contested the list prepared by the Assistant Labour Commissioner and various Unions also doubted the list but ultimately after dismissal of SLP before the Supreme Court the list prepared by the Assistant Labour Commissioner became final. The FCI having once lost from the Supreme Court proceeded to issue show cause notices to the other labours, who were not in the list as to why their services should not be terminated on the ground that they were bogus and not genuine labours.

6. The contents of the show cause notice are relevant and therefore, the same

are quoted herein below:

"As agreement dated 16.05.1994 was entered into between F.C.I. and F.C.I. Workers Union to re-employ 210 workers, but the controversy was to identify the genuine labours. F.C.I. Majdoor Sangh filed Writ-C No.22652 of 1998 challenging the communication dated 22.06.1998 in the Allahabad High Court. While disposing the Writ Petition, the Hon"ble High Court vide order dated 09.09.1998 directed the Assistant Labour Commissioner (Central), Kanpur to identify the genuine labours, within two months. The order dated 9.9.1998 was challenged in the Special Appeal by F.C.I. Majdoor Sangh and F.C.I. Workers Union in respect of two depots namely Kosikalan and Quarshi Depot of F.C.I. The Division Bench of the Hon"ble High Court in the Special Appeal upheld the order dated 9.9.1998, but extended the time for identification of the labours upto 10.3.2007. Ultimately, the Assistant Labour Commissioner (Central), Kanpur vide ex-parte order dated 20.06.2007 identified the old and genuine labours, who were working and entitled for engagement. The order was challenged by the F.C.I. before the Allahabad High Court by filing Writ Petition No.46672 of 2007, which was decided with the liberty to the F.C.I. to approach Labour Commissioner (Central), Kanpur, who shall examine the objection of F.C.I. The Assistant Labour Commissioner (Central), Kanpur, vide order dated 01.05.2009 rejected the objection raised by the F.C.I. and upheld the order dated 20.06.2007. The F.C.I. again approached the Allahabad High Court challenging the order of Labour Commissioner (Central), Kanpur by filing Writ Petition No.27550 of 2009 and 27549 of 2009, but the Hon"ble Judge vide order dated 27.05.2009 dismissed the aforesaid writ petition. The F.C.I. further challenged the judgment and order dated 27.05.2009 passed by the Hon"ble High Court Allahabad by filing Special Appeal No.967 of 2009, but the special appeal was also dismissed with the direction to the Assistant Labour Commissioner (Central), Kanpur that if any restoration application is pending before him, as claimed, he shall dispose of the same expeditiously, preferably within two months. The ALC(C), Kanpur rejected the application filed by FCI. FCI again challenged the ex-parte order dated 20.06.2007 passed by ALC (C), Kanpur and subsequent orders dated 14.01.2011 and 14.03.2011 by filing Writ C No.26953 of 2011. This writ petition was also dismissed vide order dated 11.05.2011. Special Appeal C.C. No.1558 of 2011 was preferred by FCI against the order dated 11.05.2011, but the same was also dismissed by the Hon"ble High Court Allahabad, against which Special Leave Petition No.15849 of 2014 preferred by F.C.I. had also been dismissed by the Hon"ble Supreme Court, which had also been dismissed.

Thus the order dated 20.06.2007 passed by the Assistant Labour Commissioner (Central), Kanpur had been upheld by the Hon"ble High Court Allahabad and the Hon"ble Supreme Court. Since you are not the member/workmen of F.C.I. Majdoor Sangh in the list of workmen/labours, identified by ALC(C), Kanpur, you are not genuine labour and your engagement/appointment at the initial stage is illegal and unjustified in the eye of law and your services are liable to be terminated.

You are, therefore, called upon to show cause within a period of 30 days from the date of receipt of this notice, as to why your services be not terminated. Please ensure the reply of the show cause notice within stipulated time, failing which final orders may be passed by F.C.I. ex-parte." In response to the show cause notices, the Labours responded in the following manner which is filed as Annexure-3 to the writ petition, (excerpts):

"The undersigned has never been informed by you in respect of the alleged legal proceedings ever before, whether on initiation or during the pendency so as to enable him to represent the case before all of the authorities including various Hon"ble courts as mentioned in the said notice. The said concealment cannot be led to giving you any right to dispense with the services of the undersigned. You cannot be allowed to take advantage of your own wrong.

In view of above you may ensure the implementation/compliance of the alleged legal order/judgment without dispensing the services of the undersigned."

7. In essence what appears from the response to the show cause notice is that the Labours merely stated that they were not aware of any legal proceedings which have been mentioned in the notice and further stated that if the FCI was wrong in engaging them then it cannot take advantage of its own wrong. It is to be noted that no material or explanation was produced or given by them before the FCI that they were also genuine labours originally engaged by the contractor to work for the FCI. After considering the response to the show cause notice the order of terminations were passed, which as has been mentioned above to each individual labour, who was outside the list of 166 as determined by the Assistant Labour Commissioner holding that they are not genuine labour. At this juncture, the present writ petition has been filed challenging the order of termination.

8. Heard Shri Ravi Kiran Jain, learned Senior Counsel assisted by Shri Yogesh Kumar Sinha and Shri Chandan Kumar, learned counsel for the petitioners and Shri Santosh Kumar Mishra, learned counsel for the respondents-Food Corporation of India.

9. Shri Jain, learned Senior Counsel challenging the orders of termination submits that Section 2(oo) of the Industrial Disputes Act, 1947 defines retrenchment to mean termination by the employer of the service of a workman for any reason. Therefore, termination from service of the petitioners in view of Section 2(oo) is a retrenchment. He submits that under Chapter-V(b) of the Act Section 25-N finds place. Section 25-N prescribes condition precedent to retrenchment of workman. It provides that no workman employed in any industrial establishment, who has been in continuance of service for not less than one year, shall be retrenched by that employment until three months" notice in writing indicating reasons for retrenchment is given and prior permission of appropriate government has been obtained. He further submits that before passing of the order impugned the condition precedent was not present as prescribed under Section 25-N and therefore, the order impugned is illegal and

void ab initio. It is submitted that the petitioners were not a party in any of the proceedings either before this Court or before the Supreme Court, which has been referred to above, or even before the Assistant Labour Commissioner, who had drawn up a list of 166 genuine labours and therefore, they are not bound by any of the order that has been passed as the same has been done without considering their claim. He further submits that Section 2(oo) of the Act, which defines retrenchment to mean termination for any reason whatsoever, other than a punishment, inflicted by way of disciplinary action. The present order of termination not being an order passed under disciplinary proceedings, the provisions of Section 25-N ought to have been applied before such an order could be passed.

10. With regard to the alternative remedy of approaching the Industrial Tribunal Shri Jain submits that Section 2-A of the Industrial Disputes Act would not be applicable in the present case as the order that has been passed is illegal and void and also violative of Article 21 of the Constitution, as such the Labour Court has no jurisdiction to decide the fundamental right of the petitioners.

11. To substantiate the aforesaid submission with regard to alternative remedy, Shri Jain has relied upon various decisions. Firstly he has relied upon a decision of learned Single Judge of this Court in case of Dr. Surendra Kumar Shukla v. Union of India and others, reported in 1985 UPLBEC 789, wherein it was held that the provisions of Section 25(f) having not been complied with, the impugned order of termination would be void and of no legal effect and the petitioners would be deemed to have continued in service despite the impugned order of termination. The said conclusion was arrived at by the Bench relying upon the decision in the case of Olga Tallis v. Bombay Municipal Corporation, reported in 1985 (3) SCC 545.

Shri Jain, learned Senior Counsel has further relied upon the decision of the Supreme Court in the case of D.K. Yadav v. J.M.A. Industries Ltd., reported in 1993 (3) SCC 259, wherein it has been held that right to life enshrined under Article 21 of the Constitution of India would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. He submits that in the present case, merely a show cause notice was issued and thereafter the order of termination has been passed as such the principles of natural justice have also been violated and that also is the reason for quashing of the aforesaid order.

12. Another decision that has been relied upon by the learned counsel for the petitioner is in the case of Narendra Pal Gahlot v. State of U.P. and another, reported in 1994 (68) FLR 909, wherein considering the provisions of Section 6-N of the U.P. Industrial Disputes Act, which is para materia with Section 25- N of

the Central Act, it has been held that the non-compliance of the statutory provisions of 6-N would invoke the writ jurisdiction, even if the employer is a private employer on account of violation of statutory provision. It is submitted that in the present case, the provisions of Section 25-N of the Industrial Disputes Act having not been complied with, the petitioners cannot be relegated to alternative remedy and the writ court has the jurisdiction to deal with the matter.

13. Shri Jain has also relied upon a decision in the case of *Jai Kishun and others v. U.P. Co-operative Bank Ltd., Lucknow and others*, reported in (1989)2 UPLBEC 144 to contend that even if a finding has been recorded that the petitioners are not genuine workers but having been employed in the corporation for several years and have crossed 240 days, it is not open to hold that the benefits, which has accrued to the employees for having worked for more than 240 days, would not be available if worker is stated to be not properly inducted into service and therefore, even if the appointment is in contravention of any provision, yet if the workman has continued, his termination in contravention of Section 25(f), would be void ab initio and the writ jurisdiction can be invoked. In the same line of argument Shri Jain has relied upon the decision in the case of *H.C. Puttaswamy and others v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others*, reported in AIR 1991 Supreme Court 295, wherein it was held that even if the appointment was in contravention of any Rules but have continued in service, on humanitarian ground, it must be maintained. It is claimed that the petitioners have worked for more than 22 years and by the impugned order their services have been terminated without following the statutory provision of Section 25-N of the Industrial Disputes Act and therefore, the order cannot be sustained and deserves to be quashed.

14. Contradicting the arguments raised by learned Senior Counsel appearing for the petitioners, Shri Santosh Kumar Mishra, learned counsel for the respondents-Food Corporation of India submits that the petitioners were never employees of the FCI. They were engaged through a contractor but when that system was abolished, large number of persons got unemployed and therefore, various Unions approached the establishment with regard to their re-engagement as there was still work available with the Corporation. Various unions presented various lists of workers but it was decided that only such workers, who were earlier engaged on contract basis, their claims could be considered and therefore, an endeavour was made to identify such workers, who were earlier working with the Corporation at Kosi Kala, District-Mathura, who were engaged by a contractor, to be brought under direct payment system. The lists were produced and no agreement could be reached. Ultimately, the FCI drew a list of workers as provided by the outgoing contractor. This list was challenged by the Unions by filing of writ petition, as has been mentioned above, and the learned Single Judge thought it proper to refer the matter to Assistant Labour Commissioner to draw up a proper list after investigation and considering the claim of the all concerned. The Assistant Labour Commissioner after thorough inquiry and considering all the claims drew up the list of 166 persons. This list was

challenged by the FCI as also, by the various Unions before the learned Single Judge and thereafter, in Special Appeals. The matter travelled up to Supreme Court but none of the Courts interfered with the list and dismissed the various petitions before the learned Single Judge of this Court as well as SLP before the Supreme Court.

15. It is submitted that after the detailed enquiry once it was identified that only 166 workers are genuine workers and all other workers, who claimed through Unions to be employed with the FCI, were given show cause notice in compliance of the principles of natural justice and after consideration of their reply, their services have been terminated. It is submitted that none of the employees, who were given show cause notices could make out sustainable claim of their employment with the FCI. On the contrary, only thing that was asserted was that FCI cannot highlight its own wrong. No positive material was produced that they were genuine and proper employee, who were earlier engaged by the contractor and worked for the FCI. It is submitted that through the litigation at various stages since 1998, no individual workers had ever approached the FCI or the Courts. The matter was only contested through trade Unions and various other Unions and therefore, it is submitted that the claim of the petitioners that they were not aware of any of these proceedings, which continued since 1994, is neither believable nor acceptable. Their cause were being espoused by various Unions. Now once a final decision has been taken and all the other Unions and parties contesting the list prepared by the Assistant Labour Commissioner and failed to get it quashed by any Court, at this stage, now it cannot take shelter of the fact that they were not the party in the aforesaid proceedings when the writ petition was initially decided. In the writ petition No.22804 of 1998 by order dated 9.9.1998 it gave liberty to all concerned, who had any claim to appear before the Assistant Labour Commissioner including the Labour Unions as well as the FCI. The Labour Commissioner considered the claims and after enquiry has now arrived at a list of 166 members to hold that these are genuine workers and the others have been held to be not genuine. It is submitted that the contention of the learned Senior Counsel that the petitioners were not given any opportunity is not correct as to each individual, show cause notices were given and it is also not correct to suggest that no enquiry was conducted as it is clear from the various orders in the writ petitions before the learned Single Judge and the Division Bench, the Assistant Labour Commissioner was required to enquire into the matter and produce a list of genuine workers and after much deliberation the Assistant Labour Commissioner (Central) has finally been able to arrive at a conclusion by producing a list of 166 persons. This was challenged from the High Court upto the Supreme Court and all the writ petitions have been dismissed and therefore, this is a final list for genuine workers and no further enquiry was required to be made. Once it has attained finality and the challenges have been dispelled, therefore, keeping in mind the principles of natural justice, notices were issued to all the individuals and their replies were considered and only option left was to dispense with services of the petitioners. It is further submitted

that no detailed enquiry is required in such a matter. Once the determination of genuine workers was done at the behest of the High Court and a list of 166 persons having been identified and the challenge to the same having failed, no further action is called for. But in order to adhere to the principles of natural justice, notices were given and thereafter orders were passed.

Shri Mishra further submits that the claim of the petitioners that they are retrenched employees and their services have been dispensed with without following provisions of Section 25-N of the aforesaid Act also cannot be accepted as Section 2(oo) of the Industrial Disputes Act defines "retrenchment" which means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include voluntarily retirement of the workman. He submits that the termination of the petitioner is by way of punishment as in the order of termination, it has been held that the petitioners are not genuine workers and therefore, a stigma having been attached, it cannot be said to be termination simpliciter and it is by way of punishment. He further submits that such an action by the employer would not fall within the meaning of retrenchment and therefore, there is no application of Section 25-N of the Industrial Disputes Act. Shri Mishra, further submits that the disputes raised is squarely covered by the provisions of Section 2A of the Industrial Disputes Act. Section 2A provides that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

16. Highlighting the aforesaid provisions, he submits that only remedy available to the petitioners, if any, is to approach the forum provided under the Industrial Disputes Act, 1947 and not a writ Court under Article 226 of the Constitution of India. Shri Mishra has relied upon a decision of the Supreme Court in the case of State of U.P. and another v. U.P. Rajya Khanij Vikas Nigam S.S. and others, reported in 2009 (121) FLR 424 to substantiate the aforesaid contention. He further submits that in the aforesaid judgment, the Supreme Court has categorically held that the High Court must not interfere in such dispute, which can be suitably dealt with by the Industrial Tribunal. Shri Mishra further submits that in response to the show cause notice none of the petitioners furnish any document to justify their claim, which in any case, should have been done before the Assistant Labour Commissioner, who was determining the genuineness of the workmen, who were earlier engaged on contract basis. But before the FCI also, no documents were produced with regard to their claim to be workers of the contractor before the policy of contract labour system was done away with. In the writ petition, however, 100s of documents have been filed for establishing their claims. The genuineness of these documents would definitely require Court's close scrutiny and may also require adducing of evidence and

examination of witnesses, which in any case, is not possible under the writ jurisdiction and therefore, the writ petition is not maintainable and deserves to be dismissed.

17. I have considered the submissions of learned Senior Counsel Shri Ravi Kiran Jain appearing for the petitioners and Shri S.K.Mishra, learned counsel for the respondents-Corporation.

18. While proceeding with this case, it is pertinent to note that the background of this case and the previous rounds of litigation cannot be put out of focus. The genesis and the core issue of this writ petition is the determination of list of 166 workers as determined by the Assistant Labour Commissioner (Central). This list was challenged previously before this Court as well as the Supreme Court, but after the dismissal of the SLP, the list has now become final. The order of the Assistant Labour Commissioner (Central) has now declared, which has become final that only these 166 workers are genuine workmen for the purpose of re-engagement in Kosi Kala Unit. The order of the Assistant Labour Commissioner (Central) is an order passed upon the direction of the High Court, which has been upheld by the Supreme Court. In these circumstances, there is no further enquiry required by the Food Corporation of India and once it has been determined that only these 166 are the genuine labours, rest of the workmen, who are claiming engagement with the FCI, has no basis. The FCI, therefore, was legally obliged to dispense with the services of other labours, who were not in the list as determined by the Assistant Labour Commissioner (Central), but if a worker is to be visited with pecuniary and punitive consequences, the adherence to principles of natural justice is imperative. In compliance of the said principle, notices were issued to each of the workers that under the circumstances as has been narrated above, why not their services be terminated. The workers ought to have given valid explanation to the FCI for their continuation in service. From the pleadings in the writ petition, it does not appear that these workers gave any explanation with regard to their right to continue in the engagement with the FCI, but merely stated that they were not aware of such proceedings either before the High Court or before the Assistant Labour Commissioner (Central) or before the Supreme Court. However, in the writ petition various documents have been filed to establish their claim before this Court but admittedly, no such material was shown to the FCI in response to the show cause notice.

19. In this view of the matter, the FCI appears to be justified in terminating the services of the petitioner after considering their explanation. The termination of service on the ground that they cannot continue with the FCI does have a punitive intent and is within the realm of disciplinary action. Such disciplinary action has been undertaken once it was established that they were not genuine workers in view of the final list prepared by the Assistant Labour Commissioner (Central). The various decisions relied upon by Shri Ravi Kiran Jain, learned Senior Counsel for the petitioners, in the aforesaid facts and circumstances of the case, do not appear to have any application in the present dispute. The main

emphasis of the learned counsel for the petitioners is that these workers have continued to work for 22 years and even if for argument's sake, it is held to be an illegal induction into service, yet they would be protected by the provisions of Section 25-N of the Industrial Disputes Act, 1947.

20. It is to be noted that the benefit of retrenchment can be applied only if the termination or dismissal from service is otherwise than by way of punishment. As I have already held that the termination of the service of the petitioners is a disciplinary act. In view of Section 2(oo), Section 25-N cannot be applied. Therefore, it is relevant to mention at this juncture that Section 2A of the Industrial Disputes Act, 1947 provides that where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. In the present case also, the dispute raised is an industrial dispute, which can be suitably dealt with by the forum provided under the Industrial Disputes Act, 1947.

21. Under the aforesaid facts and circumstances, I find no reason, whatsoever, to interfere with the orders impugned. The writ petition is, accordingly, dismissed. Parties shall bear their own costs.