
(2008) 07 AHC CK 0028
In the Allahabad High Court

Ravi Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 6N

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2008) 118 FLR 888

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the petitioner and the standing counsel.

2. The petitioner claims that initially he was given apprenticeship training during the period 24.4.1997 to 23.4.1998 for a period of one year under the Apprenticeship Act. He has also been given a certificate of apprenticeship training. It is claimed that after completion of apprenticeship training, the petitioner has been working on the post of fitter but his services have been terminated by the employer with effect from 26.11.1999 without any reasons and that prior to it the petitioner-workman has not been given retrenchment compensation etc. Hence action of the employer in terminating his services is illegal being against the provisions of Section 6-N of the Industrial Disputes Act 1947. It is also claimed that prior to termination of his services, the petitioner had moved an application dated 30.3.1999 to the Chairman, Nagar Palika Parishad, Hathras for regularisation of his services, on which a favourable recommendation was made and the same was forwarded to the Water Works Engineer for submitting his report about services of the petitioner.

3. In paragraph 7 of the writ petition it is averred that in the report dated 20.4.1999 submitted by Water Works Department, it reported that work of the petitioner is satisfactory and earlier recommendation was made for appointment of the petitioner on a vacant post but still he was not appointed; that Water

Works Technical Employees Association, Hathras also raised a demand for regularisation of petitioner's services as permanent and thereafter the petitioner filed Writ Petition No. 43781 of 1999, Ravi Kumar v. Nagar Palaika Parishad, Hathras and another. Yet in spite of the aforesaid facts, services of the petitioner have been terminated by an oral order without giving any written order or opportunity of hearing on 26.11.1999.

4. It is also averred in the writ petition that the petitioner informed his earlier Counsel about his termination, who assured him that he will file an amendment application in the writ petition but the same was not filed and the writ petition had been dismissed in default on 8.9.2003. Restoration application filed in Writ Petition No. 43781 of 1999 aforesaid has also been rejected on 9.12.2005.

5. It is in the aforesaid backdrop that the petitioner workman raised an industrial dispute before the Deputy Labour Commissioner, Aligarh regarding illegal termination of his services. On conciliation proceedings having failed, the matter was referred to the Labour court, Agra for adjudication where it was registered as adjudication case No. 148 of 2005.

6. On receipt of summons from the labour court, written statement alongwith an affidavit was filed by the petitioner. But neither any written statement nor rejoinder statement was filed by the employer. In support of his claim before the labour court the petitioner filed certain documents which have been mentioned in paragraph 17 of the writ petition i.e.:

(i) application dated 30.3.1999,

(ii) Recommendation dated 20.4.1999,

(iii), letter dated 19.5.1999 of Water Works Technical Employees Union, Hathras,

(iv) Work orders dated 18.8.1998 & 1.10.1998,

(v) Signature Register from the date 9.11.1998 and

(vi) Application for leave dated 17.7.1999,

but the labour court by the impugned award has decided the reference against the workman. Aggrieved the petitioner has come up in this writ petition.

7. Contention of the Counsel for petitioner is that though the labour court proceeded under Rule 12(9) of U.P. Industrial Disputes Rules 1957, yet it has given award against the workman even though the averments made in the written statement were not rebutted by the employer and therefore have to be accepted as true.

Rule 12(9) of U.P. Industrial Disputes Rules 1957, provides as follows:

12(9). If the affidavit accompanying the written statement of the Union or the workman is not rebutted by the employers, the Labour court or the tribunal, as the case may be, shall presume the contents of the affidavit to be true and make

an award accepting the facts stated in the written statement.

8. Second contention of the Counsel for petitioner is that termination of the workman is illegal as no retrenchment compensation has been given to the petitioner under mandatory provisions of Section 6N of the Act and evidence submitted by the workman was not considered by the labour court.

9. Lastly, Counsel for the petitioner has relied upon paragraph 36 of the decision rendered by the Apex Court in *Mukesh K. Tripathi Vs. Sr. Divisional Manager, L.I.C. and Others*, which reads as under;

36. A "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 must not only establish that he is not covered by the provisions of the Apprentices Act but must further establish that he is employed in the establishment for the purpose of doing any work contemplated in the definition. Even in a case where a period of apprenticeship is extended, a further written contract carrying out such intention need not be executed. But in a case where a person is allowed to continue without extending the period of apprenticeship either expressly or by necessary implication and regular work is taken from him, he may become a workman. A person who claims himself to be an apprentice has certain rights and obligations under the statute.

10. I have considered the submissions made by the Counsel for petitioner and perused the record appended with the writ petition in the context of law relied upon by the petitioner.

11. In the aforesaid case of *Mukesh K. Tripathi (supra)*, the Apex Court has held that a workman coming before the labour court within the meaning of Section 2(s) of the Industrial Disputes Act which is para materia of Section 2(z) of U.P. Industrial Disputes Act, must not only establish that he is not covered by the Apprentices Act but must further establish that he is employed in the establishment for the purpose of discharging any work as per the definition of workman. The Apex Court has also held that in case where a person is allowed to continue without extending the period of apprenticeship either expressly or by necessary implication and employers chooses to take regular work from him, he may become a workman.

12. Thus, from the reading of paragraph 36 of the decision in *Mukesh K. Tripathi (supra)*, it is crystal clear that a person who claims to be a workman has to prove his status of workman of the establishment, otherwise by import of Section 18 of the Apprentices Act, 1961 he stands excluded from the definition of workman under labour laws. In fact, Section 18 of the Apprentices Act, 1961 carves out an exception to the applicability of labour laws even though definition of workman under the Industrial Disputes Act includes an apprentice.

An in depth reading of the aforesaid judgment also brings out the fact that it is to be established by the workman before the labour court that he had been working in one or the other capacities mentioned in Section 2(s) of the Industrial

Disputes Act and not otherwise, to acquire the status of a workman; that if a person is allowed to continue without extending the period of apprenticeship either expressly or by necessary implication and regular work is taken from him, he may become a workman. But in certain circumstances he may not. Therefore to fall within the ambit of workman, a person has to be workman under the Industrial Disputes Act. He must discharge his burden of proof which lies on him for he claims to be a workman i.e. onus of proof that he is a workman is on the apprentice or the person who is claiming to be a workman. In absence of any pleading or proof that either by novation of contract or by reason of the conduct of the parties, the status of apprentice has been changed from apprentice to workman, an apprentice cannot be held to be a workman.

13. In the aforesaid case, the labour court came to the conclusion that letter of appointment clearly proved that workman was an apprentice, as such he failed to prove himself to be a workman under the Industrial Disputes Act.

14. In the instant case also, it is clear that training of the apprentice had come to an end on 23.4.1998. The labour court has given a categorical finding of fact that the workman had failed to prove his case that he was appointed or he continued as workman by the establishment after his apprenticeship. Even though under Rule 12(9), the averments made by the workman in his written statement are taken to be true and award to be made accepting the facts stated therein, yet he will have to prove his case before the labour court. The labour court is not expected to give an award without applying its mind and has to test the claim of the workman on the ground of reasonable ness if burden of proof is not discharged by the workman.

15. In fact the labour court held that neither from any of documents filed by the workman nor from any evidence brought by him on record, he could prove that after his apprenticeship training was over, he was appointed by the establishment or he continued worke as fitter in the establishment. It may be noted that some documents have also been appended alongwith the writ petition to show that he was directed to carry out different types of work at different times.

16. It has to be kept in mind what the workman had claimed in his demand that he was working on the post of fitter in the establishment after his training was over regarding which reference have been made and not that he was working on different jobs at different places. Claim of the workman as well as order of reference, show that workman claimed himself to be appointed on the post of fitter and termination from the aforesaid post and not that after completion of his apprenticeship training, he was engaged in other capacity to do any other work, hence the labour court has rightly held that the workman has failed to prove his case. There appears to be no illegality or infirmity in the award given by the labour court.

17. The law laid down in the case of Mukesh K. Tripathi (supra) in fact does not help the petitioner rather it is against him.

18. For all the reasons stated above and in view of the law discussed above, the writ petition is dismissed. No order as to costs.