
(2016) 05 UK CK 0001

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1174 of 2016

Rohitash Singh

APPELLANT

Vs

Uttarakhand Forest Development Corporation

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F
Limitation Act, 1963 — Section 14, Section 5

Citation : (2017) 1 LLN 540

Hon'ble Judges : Umesh Chandra Dhyani, J.

Bench : Single Bench

Advocate : Mr. Tapan Singh, Advocate, for the Petitioner; Mr. Virendra Kaparwan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

U.C. Dhyani, J.(Oral)—By means of present writ petitions, the petitioners seek the following relief, among others:

"Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 30.11.2015 passed by the Labour Court, Dehradun, whereby the claim of the petitioner was held as time barred (contained as Annexure No. 3 to this writ petition) and further, be pleased to allow the claim of the petitioner."

2. The facts giving rise to the aforesaid writ petitions are that the petitioners along with others were engaged by the UP Forest Corporation before the creation of the State of Uttarakhand, as daily wagers, on the post of scalers and chaukidars. All the workmen, including the petitioners, were retrenched in the year 1995, after giving one month's wages, in lieu of notice and retrenchment compensation in compliance of Section 6 N of the UP Industrial Disputes Act. Aggrieved by the retrenchment order, some of the workmen raised Industrial Dispute before the learned Labour Court, whereas some other workmen directly challenged their retrenchment order before the High Court.

3. Learned Labour Court, in the award dated 24.12.1997, dismissed the claims of the workmen, holding that the workmen are not entitled to any relief, and held that the retrenchment was valid. The workmen, being aggrieved by the said award dated 24.12.1997, filed separate writ petitions before Hon"ble Allahabad High Court, which was transferred to this High Court, after creation of the State of Uttarakhand. This court, vide Judgment dated 21.08.2003, allowed the writ petition no. 1376 of 2001 (M/S) "Jabar Singh and others v. Prescribed authority Labour Court and others" along with two other writ petitions, filed by the workmen and held that the Corporation is an "Industry", and therefore, Section 25 N of the Industrial Disputes Act is fully applicable, and set aside the award dated 24.12.1997, passed by the learned Labour Court, and also set aside the retrenchment order and further directed the Corporation to reinstate the services of the workmen and pay their wages.

4. The writ petitions filed by those workmen, who directly filed the writ petitions challenging the retrenchment order before the High Court, were also allowed in terms of the judgment dated 21.08.2003 passed in WP no. 1376 of 2001 (M/S).

5. The Uttaranchal Forest Development Corporation, feeling aggrieved with the Judgment and Order dated 21.08.2003, as well as subsequent Judgments and Orders passed in several writ petitions, approached Hon"ble Supreme Court. All the SLPs were decided by the Hon"ble Apex Court, vide judgment dated 12.12.2006, reported in (2007) 2 SCC page 112, captioned as "Uttaranchal Forest Development Corporation and others v. Jabar Singh and others."

6. Hon"ble Apex Court, in its Judgment dated 12.12.2006, was pleased to affirm the Judgment dated 21.08.2003 in respect of those workmen, who earlier challenged their retrenchment order before the learned Labour Court and thereafter filed the writ petitions before the Hon"ble High Court. Hon"ble Apex Court held that the workmen who approached the tribunal and the High Court are entitled to the relief of reinstatement, back wages and continuity of service. However, in the SLPs arising out of the writ petitions filed by the present petitioners/workmen, the Hon"ble Supreme Court held that the writ petitioners, who have not invoked the jurisdiction of the tribunal, are not entitled to any relief.

7. Hon"ble Supreme Court observed in paragraphs 43, 44, 45, 46 and 48 as under:

"43. We are unable to countenance the above submission of Mr. Mehta and Mr. Sangal insofar as it relates to the non maintainability of the writ petition and the delay and laches. It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court in court opinion, was not justified in entertaining the writ petition on the ground of laches, We have already referred to the decision of this court in UP State spg. Col. Ltd v. R.S. Pandey, This court speaking through Arijit Pasayat, J. has held in

categorical terms that writ petition under article 226 of Constitution should not be entertained when the statutory remedy is available under the Act unless exceptional circumstances are made out.

44. In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute. The High Court should not deviate from the general view and interfere under article 226 of the Constitution except when a very strong case is made out for making a departure. There are several decisions to the same effect. The respondents have not made out any strong case for making a departure. Accordingly, the conclusion is inevitable that the High Court was not justified in entertaining the writ petition.

45. We are, therefore, of the opinion that the writ petitioners (the respondents herein) who have not invoked the jurisdiction of the Tribunal are not entitled to any relief in the writ petitions. They are not entitled for any benefits of reinstatement, back wages and continuity of service.

46. On the other hand, the respondents in civil appeals arising out of special leave petitions as detailed infra who approached the Tribunal and the High Court are entitled for the relief of reinstatement, back wages and continuity of service in view of our finding that the appellant Corporation is an industrial establishment and that provisions of section 25-N of the Industrial Disputes Act are attracted.

48. For the foregoing reasons, we hold that the provisions of section 25-N of the Industrial Disputes Act 1947 are attracted non compliance with the said section makes retrenchment order illegal and non est.

8. Thereafter, present petitioners/workmen again raised Industrial Dispute by filing an application under section 2-A of the UP Industrial Disputes Act, 1947, along with an application for condonation of delay, soon after the judgment of the Hon"ble Apex Court on 12.12.2006. The application of the petitioners for condonation of delay was allowed and the delay was condoned. The Corporation challenged the said order of condonation of delay, passed by the Conciliation Officer/Assistant Labour Commissioner, in WP no. 889 of 2008 (M/S) along with several other writ petitions before this Court. All the writ petitions were dismissed with a cost of Rs. 2000/- in each petition, vide judgment and order dated 19.03.2010.

9. After the judgment dated 19.03.2010, a reference was made by the learned Dy. Labour Commissioner vide order dated 09.02.2011 and the case of the petitioners was registered as Adjudication case, under Section 4K of the U.P. Industrial Dispute Act, 1947 (which are separate in all writ petitions).

10. The learned Labour Court, vide its award dated 30.11.2015, dismissed the

claim of the petitioners on the ground that the adjudication case of the petitioners was filed in the year 2011, and since 2006 till 2011, there is 4 years" delay, which cannot be condoned, as the dispute relates to the year 1995 and calculating the delay, w.e.f. 1995, there is 16 years" delay.

11. Mr. Tapan Singh, learned counsel appearing for the petitioners herein, vehemently contended that although there is no limitation prescribed for raising an Industrial Dispute and the delay is no ground for refusing to entertain an Industrial Dispute before the Labour Court, even then the learned Labour Court failed to consider that question of limitation has already been decided by the learned Assistant Labour Commissioner and the same has been affirmed by the High Court, vide judgment and order dated 19.03.2010, while dismissing the writ petitions filed by the Corporation. The learned counsel of the petitioner also argued that after the judgment passed by the Hon"ble Apex court on 12.12.2006, in the matter of Uttaranchal Forest Development Corporation v. Jabar Singh 2007 (2) SCC 112, the petitioners, in the year 2007, again preferred their claim challenging their retrenchment order before the learned Labour Court, but the reference was sent by the learned Deputy Labour Commissioner for adjudication in the year 2011, after the High Court judgment dated 19.03.2010, which was after 4 years, in preferring the dispute before the Conciliation Officer/ Deputy Labour Commissioner and if the Conciliation Officer/Deputy Labour Commissioner had made a reference after 4 years, the same is not the fault of the petitioners. The petitioners are entitled to get the benefit of section 14 of the limitation Act and the same has already been decided by the High Court in its order dated 19.03.2010. Learned counsel of the respondents Mr. V.K. Kaparuwan, on the other hand, argued that the High Court, in its order dated 19.03.2010 has also held that "such matter could be challenged after the award is made or even at the stage when a reference is made", therefore, there is no such illegality in the award passed by the learned Labour Court.

12. I have heard learned counsel for the parties and have gone through the documents brought on record. In my considered opinion, the finding of learned Labour Court rejecting the claim of the petitioner on the ground of the delay is not legally sustainable. The learned Labour Court failed to consider that the dispute was preferred by the petitioners in the year 2007 along with the delay condonation application, which was allowed by the Conciliation Officer and the same was challenged by the Uttaranchal Forest Development Corporation before the High court in several writ petitions, which were dismissed by the High court, vide judgment dated 19.03.2010 (in the matter of Hukum Singh Farswan, vide judgment dated 17.04.2010) and, thereafter, vide order dated 19.03.2011, the Dy. Labour Commissioner sent reference for adjudication, wrongly taking into consideration the fact that the claim of the petitioners was preferred in the year 2011. The judgment dated 19.03.2010 itself held that the petitioners are to get the benefit of Section 14 of the Limitation Act, but this aspect has not been considered by the learned Labour Court, while passing the impugned award. The claim of petitioners is covered by Section 14 of the Limitation Act, and therefore,

the impugned award dated 30.11.2015 is liable to be set aside.

13. The award dated 30.11.2015 is, accordingly, set aside. The matter is remanded back to the Labour Court, Dehradun, to decide the dispute afresh in accordance with law.

14. All the Writ petitions thus stand disposed of.

15. It is expected that Labour Court shall make an endeavour to decide the dispute at an early date.