
(1993) 02 AHC CK 0027
In the Allahabad High Court
Case No : Writ Petition No. 11420 of 1984

Sadhan Sahakari Samiti Basantpur Ltd.	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 1(3), 135
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2

Citation : (1993) 2 LLJ 468

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : A.N. Tripathi, for the Appellant; A.K. Sinha, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri A.N. Tripathi, learned counsel appearing for the petitioner and Sri K.P. Agarwal, learned Senior Advocate representing the contesting respondent No. 2 at length and in detail.

2. By means of this petition, under Article 226 of the Constitution of India, the award dated July 10, 1984, rendered by the respondent No. 1 in Adjudication Case. No. 29 of 1983, registered upon a reference by the State Government, is under challenge. The impugned award holds the termination of the service of the respondent No. 2 to be illegal and improper and directs his reinstatement with effect from June 1, 1982 on which date his services were terminated.;

3. The respondent No. 2 was working as a Salesman of the petitioner since September 17, 1978 and his services were dispensed with with effect from June 1, 1982, on the basis of the charge of alleged corruption and financial irregularities. It is not disputed that before termination of his services the respondent No. 2 was neither served with any charge-sheet nor was he paid any retrenchment compensation. It is also not in dispute that no inquiry preceded the termination. In this backdrop the respondent No. 1 held the termination of the

services of the respondent No. 2 to be illegal and improper and directed for his reinstatement.

4. Relying upon Section 135 of the U.P. Cooperative Societies Act, 1965, hereinafter called the Act, Sri Tripathi submits that the provisions of the U.P. Industrial Disputes Act 1947 do not apply to the petitioner, which is a Cooperative Society, and the entire proceedings before the respondents No. 1 were without jurisdiction. Thus, the impugned award is liable to be set aside.

Section 135 of the Act reads as follows:

" 135. Certain Acts not to apply to co-operative societies. The provisions contained in the Industrial Disputes Act, 1947 (Act XIV of 1947), and the U.P. Industrial Disputes Act, 1947 (U.P. Act XVIII of 1947), shall not apply to Co-operative Societies."

5. It is true that Section 135 of the Act excludes the applicability of the U.P. Industrial Disputes Act, 1947 to the Co-operative Societies, but this section has not been enforced as yet. Sub-section (3) of Section 1 of the Act envisages that the Act shall come into force from such date as the State Government may, by notification in the Gazette, appoint in this behalf. Proviso to Section 1 authorises the State Government to declare that any provisions to be specified in the declaration shall not come into force from such appointed date and in that event such provisions shall come into force from such date or dates as the State Government may similarly appoint in that behalf. By the Notification No. 9171-C.XII CA-1098-62 dated December 30, 1967, published in Uttar Pradesh Government Gazette (Extra Ordinary) dated December 31, 1967, the State Government, in exercise of the power under Sub-section (3) of Section 1 of the Act, declared that all the provisions of the act, excluding Section 135 thereof, shall come into force with effect from January 26, 1968. No notification appointing the date of enforcement of the provisions of Section 135 has been produced before the Court. The position, therefore, is that provisions of Section 135 have not been enforced as yet. For so long as the provisions of the said section are not enforced the applicability of the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and U.P. Industrial Disputes Act, 1947 (U.P. Act XVIII of 1947) to the Cooperative Societies, including the petitioner, cannot be excluded. The submission in this behalf is wonky betraying utter ignorance of the legal position. It is, therefore, rejected.

6. To exclude the applicability of the provisions of the U.P. Industrial Disputes Act, 1947, learned counsel for the petitioner further contends that the activities of the petitioner in connection with which the respondent No. 2 was employed do not fall within the meaning of expression "Industry" which is sine qua non for applicability of the Industrial Disputes Act. It is to be noticed that the plea in this regard was never raised before the respondent No. 1. Apart from this, determination of the question as to whether the activities carried on by the petitioner fall within the expression "industry" involves investigation and

adjudication of disputed question of facts, and this Court, ordinarily, in exercise of its special and extraordinary jurisdiction under Article 226 of the Constitution of India does not undertake such an exercise.

7. Next contention advanced on behalf of the petitioner is that the order of termination of the services of the respondent No. 2 was an order of termination simpliciter, and not one by way of punishment. The petitioner, therefore, was not obliged to hold any inquiry giving opportunity to the respondent No. 2 before dispensing with his services. This contention too is untenable. A perusal of paragraph 2 of the impugned award indicates that before the respondent No. 1 it was admitted on behalf of the petitioner that foundation of the order of termination of the services of the respondent No. 2 was the alleged corruption and financial irregularities committed by him in relation to the money of the petitioner. Apart from this, the resolution passed by the petitioner with regard to the termination of the services of the respondent No. 2, which is before this Court as Annexure-3 to the petition, also indicates that the termination was not simpliciter but it was based on charges mentioned in the resolution. The termination of the services of the respondent No. 2 was not a termination simpliciter but it amounted to an order of punishment, based on charges of corruption and financial irregularities. It could, therefore, be not passed without holding proper inquiry into the charges and giving adequate opportunity to the respondent No. 2 to defend himself. The conclusion of the respondent No. 1 that the termination of the services of the respondent No. 2 was illegal and improper is correct and does not warrant any interference by this Court.

8. In the end, Sri Tripathi submits that in view of the plea of loss of confidence set up by the petitioner, the respondent No. 1 erred in directing the reinstatement of the respondent No. 2. In paragraph 7 of the written statement of the petitioner, filed before the respondent No. 1, a copy whereof is Annexure-5 to the petition, it is stated that "management of Samiti on being satisfied that Sri Mangla Prasad Singh has committed misconduct in paras 6 of this written statement, terminate the services of Sri Mangala Prasad Singh from June 1, 1982 as management of Samiti lost confidence in the workman" while in paragraph 20 of the writ petition the plea, with regard to loss of confidence is in these terms: "..... the termination being termination simpliciter on account of loss of confidence.....there was no question of reinstatement whatsoever and the Labour Court has acted illegally and wholly without jurisdiction.,in directing his reinstatement and directing his payment of salary and on that ground alone the impugned award is liable to be set aside". It has already been pointed out that the foundation of the order of termination of the services of the petitioner was the alleged corruption and financial irregularity and not the loss of confidence. The pleadings contained in paragraph 7 of the written statement of the petitioner filed before the respondent No. 1, extracted above, clearly point out that the services of the respondent No. 2 were terminated on the basis of misconduct and not on account of loss of confidence. The resolution of the petitioner with regard to the termination of the services of the respondent No. 2

also indicates that the basis of the termination of the services of the respondent No. 2 was misconduct and not loss of confidence.

9. It is well settled that, ordinarily, where the termination of the workman is declared to be illegal his reinstatement must follow. However, the Labour Court has discretion to decline to grant the relief of reinstatement and may award compensation in lieu thereof, if it is satisfied that, on the facts and circumstances of the case, reinstatement will be inexpedient or improper. Loss of confidence of the employer in a workman may be a circumstance justifying denial of the relief of reinstatement but the plea of loss of confidence can be entertained only if it is founded on material facts and particulars specifically pleaded and proved. The material facts and particulars in this regard will, inter alia, include the role of confidence in the business of the employer, nature of the job performed by the workman and the specification of confidentiality involved therein. In the instant case neither there was requisite pleading with regard to loss of confidence nor any evidence in support thereof before the respondent No. 1. It is, therefore, difficult to hold that the respondent No. 1 committed any error in denying the benefit of doctrine of loss of confidence to the petitioner and directing the reinstatement of the respondent No. 2.

10. In the result, the petition fails and is hereby dismissed, but there will be no order as to costs. The interim order dated September 10, 1984 shall stand discharged.