

(1991) 01 AHC CK 0142
In the Allahabad High Court
Case No : Civil Misc. Writ No. 17690 of 1985

Sahkari Ganna Vikas Samit Ltd.

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1), 5(2)
Constitution of India, 1950 — Article 226
Uttar Pradesh Cane Co-operative Service Regulations, 1975 — Regulation 34
Uttar Pradesh Co-operative Societies Act, 1965 — Section 122
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (1991) 1 AWC 457

Hon'ble Judges : V.N. Khare, J

Bench : Single Bench

Advocate : Arun Tandon and S.C. Bodhwar, for the Appellant; Syam Narain, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Khare, J.—By means of this petition under Article 226 of the constitution of India the Petitioner has come up before this Court against the award dated 19th June 1985, given by the Labour Court, Meerut.

2. The Petitioner is a society registered under the provisions of the U.P. Cooperative Societies Act (hereinafter referred to as the Act) and the rules framed thereunder.

3. The Cane Commissioner U.P. in exercise of powers u/s 122 of the Act framed regulations known as "U.P. Cane Cooperative Service Regulation" 1975 (hereinafter referred to as the Regulation). The Regulation were published in the Uttar Pradesh Gazette. The regulations governed service conditions of the employees of the Cane Cooperative Society throughout the State of Uttar Pradesh. Under the provisions of the aforesaid Regulations the State of Uttar Pradesh constituted District Cane service Authority, Muzaffarnagar and Regional

Cane service Authority, Meerut. Under the Regulation the Authority is employer of the employees of the Ganna Vikash Samities limited.

4. Respondent No. 2 was appointed as a Seasonal Clerk on the direction of District Cane Service Authority, Muzaffarnagar by the order of the Secretary of the Society dated 22nd February 1976. On 19th May 1978, the Chairman of the Authority terminated services of Respondent No. 2 in exercise of power under Regulation 34 of the Regulations, Since no conciliation was arrived at before the Conciliation Officer, the State Government in exercise of power u/s 4-K of the U.P. Industrial Disputes Act, referred the matter in dispute for adjudication before the Labour Court, U.P. Meerut by an order dated 24th November 1983. The matter in dispute was numbered as Adjudication case No. 20 of 1984. The parties filed written statement and rejoinder affidavit and led evidence. The Labour Court found that Respondent No. 2 was not paid a week's pay in lieu of notice and as such termination of his services was illegal and by the impugned award set aside the order of termination of service of Respondent No. 2 and directed his reinstatement.

5. Learned Counsel appearing for the Petitioner argued that the view taken by the Labour Court in holding that in absence of one week's pay in lieu of notice for termination of services would render the order of termination illegal, is patently erroneous. He submitted that in fact Respondent No. 2 had been paid one week's salary in due course and there was no requirement of law that payment should accompany notice of termination of service.

6. In support of his argument learned Counsel cited decisions in Director of Technical Education U.P. Kanpur v. John Mohammad. 1975 ALR 8 and in State of Uttar Pradesh v. Dinanath Rai (civil appeal No. 1934 of 1968 decided on October 11, 1968) reported in 1969 SLR 647.

7. On the other hand, learned Counsel for Respondent No. 2 contended that payment of a week's salary in lieu of notice is a condition precedent for exercise of power to terminate the service of an employee and since no payment of one week's salary in lieu of notice was made, the order of termination is illegal. In support of his submissions learned Counsel for the Respondent relied on the two decisions of the Supreme Court in Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, and Raj Kumar Vs. Union of India (UOI) and Others, and page 1116 (second case)(hereinafter referred to as first and second cases respectively).

8. I shall now examine these cases to determine as to whether payment of one week's pay in lieu of notice is necessary at the time when the order of termination is issued or served. First, I take up the cases cited by the counsel for the Respondent.

9. In the case of Senior Superintendent R.M. Section (supra) the question for consideration was as to whether in the absence of one month's pay service of a Government servant can be terminated forthwith under Rule 5 of the Central Civil

Service (temporary service) Rules 1965. Rule 5 of the Rules is reproduced below:

5. Termination of Temporary service:

(1)(a) The services of a temporary Government servant who is not in quasi, permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant:

(b) the period of such notice shall be one month provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month.

Interpreting the Rule, the Supreme Court held that if the services were to be terminated forthwith without period of one months' notice, it has to be done by payment to the Government servant of the sum mentioned that is one month's salary. Payment of one months' pay is a condition for termination of service forthwith. Since payment of one month's salary did not accompany the order of termination of service of the Government servant, it was held to be illegal. This decision was followed in the case of *Raj Kumar v. Union of India* (first case 536) (supra). It appears that after the decision in the case of senior Superintendent (supra) Rule 5 of the Central civil services (Temporary service) rules were amended with retrospective effect, and by the said amendment the proviso to Rule 5(1)(b) provided that services of any Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim the sum equivalent to the amount of his pay plus allowances for period of notice. It appears that this amended rule was not brought to the notice of their Lordships of the Supreme Court while deciding the case of *Raj Kumar* (first case 536)(supra). Therefore, the amended rule was considered in the same case reported in *Raj Kumar Vs. Union of India (UOI) and Others*, . While interpreting the amended rule the Supreme Court held that while terminating the services forthwith payment of salary at the same time was not a condition precedent for termination of service of a government employee.

10. In *State of Uttar Pradesh v. Dinanath Rai* (supra) and *Director of Technical Education U.P.* (supra), the U.P. Rules regulating termination of service of temporary Government servants came up for consideration. Sub-rule (2) of the rules provided that period of such notice shall be one month given either by the appointing authority to the Government servant or by the Government servant to the appointing authority provided that in case of notice by the appointing authority the latter may substitute for whole or part of this period of notice pay in lieu thereof. While interpreting these rules their Lordships of the Supreme Court as well as this Court, in the case of *Director of Technical Education* (supra) held that payment of one month's pay alongwith termination order is not a

condition precedent to the making of an order of termination of service.

11. From an analysis of these cases it is clear that payment of salary alongwith order of termination of service depends on the requirement of rules governing the services of the Government servant. If the rule requires that payment is to accompany notice of termination where one month's notice has not been given in such cases in the absence of payment of salary alongwith notice the termination of service has been held to be illegal. Where there is no such requirement under the rules even if one month's notice has not been given and payment of salary was made in due course of time, the order of termination was held to be valid. In this back ground of these decisions let us examine the present case.

12. Admittedly, in the present case the Rule under which services of Respondent No. 2 has been terminated is regulation 34. Regulation 34 is reproduced below:

34. Termination of services. The services of a seasonal employee may be terminated by recruiting or appointing authority on any time on a week's notice or with a week's salary in lieu thereof. This provision shall not apply in case of termination as a result of disciplinary proceedings or termination at the close of crushing season.

13. A perusal of this Regulation would show that services of a seasonal employee may be terminated by appointing authority at any time on a weeks' notice or with a week's salary in lieu thereof. The precise words used in the Regulation are plain and unambiguous. Therefore, the Court has to construe them in ordinary sense. The first part of the Regulation clearly shows that termination of service can be effected on a week's notice and if a week's notice is not given termination can be effected with payment of a week's salary. The word "with" is a preposition In "The New Lexicon Webster's Dictionary of the English Language" with means to indicate that two or more persons or things are together, in agreement harmony, accompanied by". Taking ordinary meaning of the word "with" where termination has not been effected on a week's notice the order of termination must accompany payment of a week's salary to the employee. Therefore, I am of opinion that payment of a week's salary is a condition precedent for effective termination of service if the employer decides not to give a week's notice while terminating services of an employee. To put the matter in a nut-shell the effective termination of service has to be simultaneous with payment to the employee. The order of termination Annexure 2 to the writ petition discloses that services of Respondent No. 2 were terminated on giving one week's salary and not on one week's notice. This order of termination is dated 19th May 1978 and was served on Respondent No. 2 on the same date. Note 2 of this order direct the Secretary of the Ganna Vikash Samiti to pay one week's salary to Respondent No. 2 but payment was made in due course. Since payment of one week's salary is a condition precedent for effective order of termination where one weeks, notice is not given, the Labour Court rightly held the termination of service of Respondent No. 2 as illegal. In this view of the

matter the argument of learned Counsel for the Petitioner must be rejected

14. It was next contended by the learned Counsel for the Petitioner that the employer before the Labour court in its written statement made a prayer that it may be allowed to lead evidence to prove that the Respondent had committed misconduct and termination of his service was justified but the said prayer was illegally rejected. He relied on two decisions of Supreme Court in the case of Workmen of Motipur Sugar Factory (pvt.) Ltd., and Motipur Sugar Factory (private) Ltd. 1965 (XI) LLJ 162 and Lakshmiratan Cotton Mills Co. Ltd. Vs. Its Workmen,

15. Learned Counsel for the Petitioner brought to my notice certain paragraphs of the writ petition wherein it is alleged that on a surprise inspection by the authority, Respondent No. 2 was found having permitted illegal weighment of cane on slips which are not issued by the Petitioner Samiti and, therefore, he committed misconduct and his services were rightly terminated and in fact, if opportunity would have been given to the Petitioner to lead evidence before the Labour Court, it would have proved the charge of misconduct against the Respondent.

16. In the cases relied upon by the learned Counsel for the Petitioner it was held that when a domestic enquiry has been held by the employer and the employer relies on the same it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before " the Tribunal if the finding on the preliminary issue is against the employer. The Tribunal is required to judge the validity of the domestic enquiry as a preliminary issue and if its finding on the preliminary issue is in favour of the employer then no additional evidence need be cited by the employer and in case the finding on the preliminary issue is against the management the Tribunal will have to give an opportunity to the employer to lead evidence. There is no quarrel with this proposition as laid down by the Supreme Court. But the question is if an employer terminates services of a temporary employee in the exercise of power to terminate the services of a temporary employee and the said order is not based upon any misconduct or by way of punishment, can it be said that in case such a termination is found to be illegal, the employer has a right to adduce evidence before the Tribunal for proving that the employee has at some point of time committed misconduct and, therefore, his termination is valid. According to my opinion once an employer passes an order terminating services of an employee which is simplicities order of termination and not based upon any misconduct, it is not open to him to frame charge for the first time and initiate disciplinary proceedings before the Tribunal. Only where order of termination of service is by way of punishment or is based on some misconduct and the said order was either passed without any domestic enquiry or was passed after domestic enquiry and such enquiry is found defective improper or against the law, only then it is open to the employer to make a prayer before the Tribunal to lead evidence to justify the order of

termination on misconduct. In the present case the Petitioner's case was that services of Respondent No. 2 were terminated under regulation 34 of the Regulations and the said termination is a simpliciter order of termination not based upon any misconduct. If this was the case of the Petitioner it is not open to it to frame charges for the first time before the Labour court and pray to court to lead evidence to justify the alleged misconduct and substitute the order of termination into an order of removal or termination by way of punishment. Such a prayer is not permissible. In fact the Labour court is not an alternative forum for holding disciplinary proceedings against a delinquent employee.

17. In view of the above, I am of opinion that the prayer of the employer before the Labour court to lead evidence for proving the alleged misconduct for justifying the order of termination, was rightly refused.

18. In view of the discussions above, there is no merit in the writ petition. It is accordingly dismissed with costs.