

(2002) 08 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32363 of 1993

Satendra Deo Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2002) 5 AWC 3488 : (2003) 1 UPLBEC 327

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

2. Admittedly, the petitioners were working as Casual Labours in the Workshop of Public Works Department, Provincial Division, Azamgarh. Their services have been terminated. They alleged that they have completed continuous services of more than 240 days and pray that order dated 1.6.93 terminating their services be quashed and the respondents be directed to regularize their services. In Para 11 of the writ petition it has been alleged that the sole purpose of retrenching the petitioners is to prevent the regularization their services and to recruit new personnel for the purpose as is evident from the directions issued by respondent No. 3 and contained in circular issued by respondent No. 2. In Para 13 of the writ petition it has been alleged that the petitioners have no other efficacious and alternate remedy except by way of this writ petition before this Court under Article 226 of the Constitution of India.

3. This petition was filed on 6.9.93. No stay was granted to the petitioners.

4. The question as to whether the petitioners have actually worked for more than 240 days or not and as to whether there is any vacancy in the department or not has to be proved by leading evidence before the Labour Court. Apex Court in The

Range Forest Officer Vs. S.T. Hadimani, , held that it is for the claimant workman to establish on basis of cogent evidence that he had actually worked for more than 240 days in the year preceding is termination and for this purpose he has to prove by leading evidence. Mere statement on affidavit is not sufficient and even completion of 240 days service does not confer right of regularization unless the rules applicable or the terms of service in appointment letter provides so. Actual working of 240 days in a year is only relevant for purpose of retrenchment u/s 6-N of the UP. Industrial Dispute Act, 1947. The services of the petitioner were terminated in 1993. Unless termination is set aside they cannot be regularized. The dispute regarding validity and correctness of the termination requires adducing oral and documentary evidence, which cannot be adduced before the Court under Article 226 of the Constitution of India.

5. Counsel for the petitioner states that a direction may be issued to the respondents to decide the representation of the petitioner if made by him.

6. In this view of the matter, this is not a fit case for exercise of powers under Article 226 of the Constitution of India. The writ petition has no force and is dismissed with direction that in case the petitioner makes a representation within a period of one month from today before respondent No. 2, it shall be decided by him by a reasoned and speaking order within a further period of 2 months thereafter from the date of production of a certified copy of this order in accordance with law.