
(2002) 10 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 15315 of 1999

Secretary/General Manager, District Co-operative Bank	APPELLANT
Vs	
Presiding Officer, Labour Court, and Another	RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 25F, 4K, 6N

Citation : (2002) 5 AWC 3965

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : M.P. Gupta, for the Appellant; Ikram Ahmad, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, the employer Secretary/General Manager, Jalaun District Co-operative Bank Ltd., Orai, who is Petitioner in this case, has challenged the award of the Labour Court, U.P., Lucknow, dated 28.9.1998, passed by Respondent No. 1 in Adjudication Case No. 24 of 1996, copy whereof is annexed as Annexure-1 to this writ petition. The State Government vide its order dated 30.3.1996 in exercise of its power u/s 4K of the U.P. Industrial Disputes Act, 1947, referred the following dispute for adjudication before the labour court:

other language

2. After issuance of the notice, parties have put in appearance before the labour court and filed their respective written statements and rejoinder-affidavits. Workman Ashok Kumar Chaubey has stated in his written statement that he was employed with the Respondent-bank w.e.f. 17.9.1990 and continuously worked till 1.5.1995 when his services were terminated by oral order. It is further alleged that neither any notice of termination as contemplated u/s 6N of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"), nor any

retrenchment compensation contemplated in the aforesaid provision of Section 6N of the Act has been paid by the employer before illegally and arbitrarily terminating the services of the workman concerned. The case of the workman is further that from what has been stated in the pleadings, it is clear that he has worked for more than 240 days in the preceding 12 calendar months before the date of termination of his services, i.e., 1.5.1995. The workman has also filed documentary evidence in the form of the affidavit, which has neither been controverted, nor he was cross-examined by the employer before the labour court. The employer took up a stand that reference of the labour court, Lucknow, if not illegally, at least making as already in existence, the labour court exhaust and therefore, the reference is bad in law and any award that might be given by the labour court would be without jurisdiction. On merit, the employer have taken a stand that no doubt the workman was employed on 27.9.1990 and his services were terminated on 1.5.1995, but he has not worked for 240 days in any year. The labour court after considering the objections raised by the employer has held that the dispute referred to labour court, Lucknow, cannot be said to be without jurisdiction, particularly in view of the case decided by the Apex Court in the case of Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, wherein it has been observed that "once the State Government is satisfied that there exists an Industrial Dispute and refers the matter to the labour court, the labour court has absolutely no option but to answer the reference". In this view of the matter, the objection raised by the employer before the labour court is not sustainable and has been rightly rejected by the labour court. So far as the stand that the workman has not complete 240 days of working in any year, the labour court after considering the evidence of the respective parties has recorded a finding that the workman did complete 240 days of working in the previous calendar year. It has categorically observed that the workman has filed an affidavit (documentary evidence) in support of his stand that he has worked for more than 240 days in the previous 12 calendar months, but the employer's representative has not, either cross-examined him, or controverted the same. In this view of the matter, the labour court has no option but to accept the un rebutted evidence filed by the workman. Thus, the finding arrived at by the labour court that the workman concerned has worked for more than 240 days in the previous 12 calendar months is a finding of fact, which cannot be interfered with, nor any such ground has been made which may warrant any interference. It is admitted fact that before terminating the services of the workman concerned, the employer have not complied with the provisions of Section 6N of the Act. In this view of the matter, the labour court has rightly answered the reference holding that the termination of the services of the workman concerned w.e.f. 1.5.1995 by the employer is illegal and un-reasonable and that the workman is entitled for re-instatement with continuity of service and back wages. This award, in my opinion, does not warrant any interference as it is covered by the findings of fact, as stated above. Learned Counsel appearing on behalf of the Petitioner-employer wanted to raise certain grounds based on the decisions of this Court as well as the Apex Court, wherein the claim of

regularization of the daily wager has been denied for the reasons given in the different decisions. These decisions are clearly distinguishable on facts because here neither any claim of regularization has been made, nor granted by the labour court. It is a simple case of termination, which amounts to retrenchment without compliance of the provision of Section 6N of the Act. Lastly, learned Counsel for the Petitioner-employer has argued that Petitioner-employer is a co-operative society registered under the provisions of U.P. Co-operative Societies Act, 1965 and is governed with the provisions of the Act, Rules and Regulations framed thereunder. The employment in the bank, according to the learned Counsel for the Petitioner, is regulated by the Rules framed by the State Government in exercise of power under Sections 121 and 122 of the U.P. Co-operative Societies Act, known as U.P. Co-operative Employees Service Regulations, 1975, which, inter alia, provides that the Committee shall have no right to appoint any person even in category IV as the case of the workman beyond the period of 180 days. There are settled law in this regard that even though the Regulations do not permit to appoint beyond 180 days, but the employer has taken the services from the workman and allowed him to continue beyond the specified period, his services cannot be terminated subsequently without compliance of the provision of retrenchment as contemplated u/s 25F of the U.P. Industrial Disputes Act, 1947 (Central Act) and Section 6N of the U.P. Industrial Disputes Act, 1947.

3. For the reasons stated above, this writ petition has no force and deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.