

(2007) 11 AHC CK 0141

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22653 of 2003

Shahjade

APPELLANT

Vs

Industrial Tribunal (I), Allahabad and Anoter

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(00)(bb)

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(oo)(bb), 6N

Citation : (2008) 116 FLR 505

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : H.K. Srivastava and Siddharth, for the Appellant; P.K. Mukherjee and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri Siddharth Counsel for the Petitioner, Sri P.K. Mukherjee and Standing Counsel for the Respondents.

The Petitioner was appointed as Labourer on 25.6.1982 in the Respondent M/s. Jeep Industrial Ltd. Allahabad.

2. The Petitioner-workman claimed that his services had wrongly been terminated vide order dated 21.10.1997 w.e.f. 23.10.1997. The Petitioner raised an industrial dispute. On conciliation proceedings having failed, the matter regarding validity and justification of termination of the workman was referred to Industrial Tribunal (I), U.P. at Allahabad, where it was registered as adjudication case No. 24 of 1999. The order of reference is as under:

Kya sewayojakon dwara apne sambandhit shramik Sri Shahjade, putra Sri Abdul Khalik ki sewain dinank 23.10.1997 ke samapt kiya jana ucit tatha/athwa vadhainik hai? Yadi nahi, to sambandhit shramik kya hitlabh/anutosh (relief) pane ka adhikari hai, evam anya kis vivran sahit?

3. On receipt of summons, the workman filed his statement of demand inter alia

that though he was a daily-wager, he was performing permanent nature of work and as such was a permanent workman; that he was engaged from time to time for fixed periods which came to an end after the period for which job had been provided came to an end. It was also claimed that artificial breaks of two to four days was given in between each fresh appointments which amounted to unfair labour practice and this device was resorted by the employer to deny the benefits of permanency in employment to the workman concerned. It was also alleged that while illegally terminating the services, the employer retained juniors to him in service and as the workman had worked for more than 240 days in each of the years, his termination from service without holding any enquiry was wrongful and for all the aforesaid reasons as well as being against the provisions of law. The workman sought relief of reinstatement with continuity of service and other benefits of a permanent workman.

4. In their rejoinder affidavit, the employers case before the labour Court was that the Petitioner-workman was only a temporary employee, he was engaged from time to time on need basis and he has never worked continuously in the establishment for more than 240 days in any of the year of his engagement. It was denied by the Respondents-employers that any junior to the workman concerned had been retained in service and that the workman was paid all his dues and amount in lieu of notice according to the provisions as contained in the certified standing order of the Company; that they have not indulged in any unfair labour practice or have given any artificial break in the service of the workman as alleged by him.

5. It was also denied by the employer that the Petitioner was neither a permanent workman nor was working against any permanent post; that his nature of work was also not permanent. Their case was that the termination of service of the workman contract after expiry of the limited term of engagement on account of non-renewal of contract does not amount to retrenchment within the meaning of Section 2(00)(bb) of the Industrial Disputes Act (Central) as amended by Act No. 46 of 1982 w.e.f. 31.8.1984.

6. The parties filed documentary evidence as well as produced witnesses before the labour Court in support of their case.

After appreciating the pleadings, evidence and arguments of the parties, the Court by the impugned award dated 22.2.2002 noticing the judgment rendered by the Apex Court in the case of Birla V.X.L. Ltd. v. State of Punjab and Ors. 1998 (80) FLR 624 (SC), as well as the decision of Division Bench in the case of Punjab and Haryana High Court rendered in between Gurdaspur Central Co-operative Bank Ltd. v. Labour Court and Ors. 1998 (80) FLR 762 (P and H) the decision rendered by the Bombay High Court in the case of Rajan Auto Ltd. Akurdi Pune and R.P. Savani and Ors. 2000 (94) FLR 524 (Bom.). held that there should be some evidence which would indicate an improper motive so as to enable the Court to arrive at a finding of unfair labour practice and that if the temporary employment is condemned as an unfair labour practice then in other

Government and private industries employing temporary workman would not be able to function as need to employ temporary workman in temporary work and projects is required from time to time. All of them cannot be made permanent if they have worked on some work or some project and as such it is for the employer to manage his own affair within the legal framework without violating any provision of any limited laws.

7. The Court further held that every act of the Management in organizing its business affairs or in re-organizing the labour employed in the factory cannot be termed as unfair labour practice. In this backdrop, the labour Court recorded findings of fact on the basis of evidence on record and pleadings of the parties. The findings recorded by the Tribunal in paragraph 24 of the award is as under:

From the evidence on record, pleadings of the parties and after hearing learned representatives for the parties I have no hesitation in holding that the workman has miserably failed to prove that he has worked for 240 days for entitling him for the benefit of Section 6-N of the U.P. Industrial Disputes Act, 1947 and Rules 42 and 43 of the Rules framed under the Act nor he proved that any juniors to him was retained violating Section 6-P of the U.P. Industrial Disputes Act, 1947. On the other hand Shahzadey, the workman concerned, was engaged temporarily for short durations at different intervals. His temporary appointment ended by efflux of time. Having regard to the clear terms of his appointment order, which he accepted by signing at the foot thereof, the employer was entitled to bring his employment to an end at the conclusion of the period of temporary employment. The case is squarely covered by the Division Bench decision of Allahabad High Court in the case of Smt. Pushpa Agrawal (supra) in as much as Clause (bb) of Section 2(oo) of the Central Act will be applicable to every case whenever the question of validity of termination of service is raised on the ground of non-compliance of Section 6-N of the U.P. Act. This being the position, termination of service of the workman cannot be said to be a case of retrenchment as it falls in one of the exception laid down in Clause (bb) of Section 2(oo) of the Central Act. The employer has not indulged in unfair labour practice. The ruling cited by the learned representative for the workman is not applicable in the facts and circumstances of the case and are distinguishable.

Considering the entire facts and circumstances of the case I arrive at the irresistible conclusion that the workman is not entitled to any relief. The reference sent by the State Government is decided against the workman and in favour of employer. No order as to cost.

8. Aggrieved by the aforesaid findings, the workman has come up in this writ petition.

Counsel for the Petitioner first assailed the findings recorded by the Industrial Tribunal in respect of Section 2(oo)(bb) of the Central Act and submits that in the State of U.P., the Provisions of Section 2(oo)(bb) are not applicable.

He then submits that even otherwise since the workman continuously worked in

the Respondents" establishment from 1982 to 1987, his services cannot be terminated without compliance of Section 6-N of the U.P. Industrial Disputes Act, 1947.

9. Sri P.K. Mukherjee, Counsel appearing for the Respondents, submitted that it is apparent from the record of actual working of the Petitioner, as noted by the Industrial Tribunal that he has never worked continuously for 240 days or more in any of the years as claimed by him; that claim of the workman is baseless and he has not been given 2 or 3 days of artificial breaks as alleged by him. The actual days of working put in by the Petitioner workman is as under:

(Period of Appointment)

(Exhibit No.)

1.

First Appointment 25.6.1982

Ex. E-2

2.

Temporary appointment 9.3.1995 to 9.4.1995

Ex. E-15

Extension 10.4.1995 to 10.7.1995

Ex. E-11

Extension 11.7.1995 to 19.10.1995

Ex. E-12

3.

Temporary Appointment 22.3.1996 to 22.4.1996

Ex. E-17

Extension 23.4.1996 to 22.7.1996

Ex. E-13

Extension 23.7.1996 to 25.7.1996

Ex. E-14

4.

Temporary appointment 13.3.1997 to 12.4.1997

Ex. E-4

Extension"12.4.1997 to 12.7.1997

Ex. E-19

Extension 12.7.1997 to 22.10.1997

Ex. E-20

He then urged that if for the sake of arguments it is accepted that Section 2(oo) (bb) of the Industrial Disputes Act, 1947 is not applicable in U.P. even then, the Petitioner would not be entitled to any relief as has been held by the Tribunal on the basis of his actual working on record (quoted above) before the labour Court.

10. After hearing of the Counsel for the parties, it is apparent that no artificial breaks for a day or two have been given by the employer to deprive him the benefits of permanency to the workman hence it cannot Lie said that he has worked continuously in any of the years during his alleged span/period of working from 1982 to 1987. It is not denied by the workman that he has "been paid for the days he has worked and has also been given notice compensation as per certified standing order of the Company. The workman therefore cannot lay any claim to permanent employment beyond the period clearly stipulated in his appointment letter which he has accepted and worked in pursuance thereof.

11. Sri Siddharth Counsel for the Petitioner could not show any rule to the Court that in the event of the workman completing 240 days of continuous service the workman will become a permanent employee in the establishment. He also does not deny the contention of Sri P.K. Mukherjee, Counsel for the Respondents based on record that the workman did not put in 240 days of continuous service in any of the period of his engagement aforesaid and that artificial breaks were not for two or three days so as to be condoned for giving him the benefits of continuous service.

12. For these reasons and for the reason that the workman has failed to prove that he has continuously worked for 240 days to entitle him for the benefits u/s 6-N of the U.P. Industrial Disputes Act. The termination of his temporary specified term of engagement for short duration by efflux of time cannot give him the status of permanent employee in the establishment. A workman may work against a permanent post but it is the term of his appointment on that post that would determine his contract and a nature of service. Having taken note of the acceptance of the clear terms of his appointment letter in writing, the labour Court has rightly held that the workman is not entitled to relief of reinstatement with back-wages and continuity of service as claimed by him.

For all the aforesaid reasons stated, there is no illegality and infirmity in the award which is upheld. The writ petition is accordingly dismissed.