
(2007) 12 AHC CK 0174
In the Allahabad High Court

Shiva Nand

APPELLANT

Vs

Presiding Officer, Labour Court, Superintending Engineer,
Anusandhan Evam Niyojan (Jal Sansthan), Executive
Engineer, Anusandhan Evam Niyojan (Jal Sansthan) and
Sanradhan Adhikari

RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6

Citation : (2008) 117 FLR 523

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties. This petition has been filed against the validity and correctness of the order dated 6.10.01 published on notice board on 7.8.2002, which has been annexed as annexure No. 7 to the writ petition. The petitioner has prayed for issuance of writ, order or direction commanding the respondents to reinstate the petitioner in service and also pay salary and emoluments payable to the post occupied by the petitioner alongwith interest payable thereon.

2. The petitioner was initially engaged on daily wager in Anusandhan Evam Niyojan (Jal Sansthan) under respondent No. 2 and 3 i.e. Superintending Engineer as well as Executive Engineer , M/S Anusandhan Evam Niyojan (Jal Sansthan), Mandal, Allahabad from time to time on need basis. He was disengaged w.e.f. 1.1.1989 after the work or the specified period for which he was engaged was over.

3. It appears that the petitioner raised an industrial dispute with regard to his disengagement from work/service. On conciliation proceedings having failed the dispute was referred by the State Government in exercise of powers u/s 4 K of the U.P. Industrial Disputes Act, 1947 to Labour Court, UP. Allahabad where it

was registered as adjudication No. 42 of 1998. On receipt of summon the parties filed their respective written statement and reply as well as rejoinder affidavit. An application was also moved by the workman for summoning muster roll from September, 1984 to November 26, 1988 from the employer to prove that he had worked for 240 days of continuous service in preceding 12 calendar months of each year of engagement in service.

4. The Labour Court by the impugned award dated 6.10.2001 held that the petitioner has failed to establish that he had worked for 240 days of service continuous in each of the calendar year he would under the employer. This finding which is also supported from the documents, which had been got summoned by the workman from the employer and produced by them. The labour court has come to these categorical findings that the concerned workman was engaged on need basis from time to time, he never been service continuous 240 days or more days in a calendar years and that he was disengaged after the work was over on the basis of pleadings, documents and oral evidence adduced by the parties.

5. A specific finding of fact have also been recorded that the workman was never appointed in accordance with the Rules against any substantive vacancy and that burden of proof was upon him to prove his case in which he had utterly failed. The relevant finding of the labour court in para 9, 10 and 11 are as under:

9- IkekU; :i esa Isok;kstd dks Isok Is fudkyus dk vf/kdkj Li"V :i Is miyC/k gS A [kkldj nSfud osru Hkksxh Jfed osru ij dh xbZ Isok dks vk/kkj cukdj fu;fer deZpkjh gksus dk ykHk ugh izkIr dj ldrk A Jfed dks fudkys tkus ds laca/k es Isok;kstd dk Li"V dFku gS fd vko;"drkuqlkj mlls dk;Z fy;k x;k vkSj bl le; muds ;gka u rks ,slk dksbZ in gS vkSj u gh dksbZ in fjDr gS vkSj u dksbZ ,slh O;oLFkk gh gS ftlds vUrZxr Jfed dks Isok esa j[kk tk lds A dksbZ vkfFkZd O;oLFkk Hkh muds laLFkku esa ugh gS fd Jfed dks Isok;ksftr fd;k tk lds A ifjLFkr;ksa Li"V djrh gS fd nSfud osruHkksxh ds :i esa Jfed dk fudkyk tkuk kanHkkoh gS vkSj Jfed vius l'kiFk dFku esa Hkh bl rF;ksa dks izekf.kr djus essa lQy ugh jgk A Isok;kstd }kjk "kks"k.k vkSj Jfed fo:) O;ogkj ds dkj.k mls Isok esa fudkyk x;k A

Jfed ;g izekf.kr djus esa vLQy gS fd mls 240 fnu dh yxkrkj Isok ,d dys.Mj o"kZ es iwjh dh gS A Isok;kstd }kjk izLqr fd;s x;s eLVj jksy Hkh blh rF; dk leFkZu djrs gS fd Jfed }kjk ,d dys.Mj o"kZ esa 240 fnu dh Isok ugha dh x;h A vr% bl vk/kkj ij Hkh /kkjk 6&,u] m0iz0 vkS0fo0 vf/k0 1947 dk mYya?ku ugha fd;k x;k gS vkSj Jfed ekaxk x;k vuqrks"k ikus dk vf/kdkjh ugh gS A Jfed dh vksj ls rdZ fn;k x;k fd lh0ih0 okn la0 175@96 esa Isok;sktd dh vksj ls tks mRrj fn;k x;k gS mlds iSjk 11 esa ;g dgk x;k fd oknh us o"kZ 1995 dks NksMdj dHkh Hkh 140 fnu ls vf/kd dk;Z ugh fd;k gS rFkk ftl ekg eas ftrus fnu dke fd;k gS mldk fooj.k izLqr fd;k tk pqdk gS A ;g dFku foijhr rF;ksa esa lk{; o izek.k dk :i ugh ys ldrk gS A

10- i{kdkjks dks rdksZ ds vfrfjDr ,d egRoiw.kZ rF; vkSj Hkh izdk"e eas vkrk gS fd Jfed dh Isok ds dFkukuqlkj fnukad 1-8-89 ls lekIr gqbZ vkSj Jfed }kjk orZeku ekeyk o"kZ 1998 esa izLqr fd;k x;k A ;g ekeyk 2001 esa fuLrkfjr gks jgk gS A

Jfed ds tkus ls LFkku Hkh fjDr ugh gqvk A bl yEch vof/k ds ckn Jfed vkSj lsok;kstd viuh&viuh O;oLFkk vo"; lqfuf"pr dj fy;s gS A Jfed dh vksj ls bl yEch vof/k ds ckn nk;j djus dk dksbZ dkj.k Hkh izLrqr ugh fd;k x;k A bl laca/k esa m0iz0 bysDV~hflVh cksMZ cuke ihBklhu vf/kdkjh] yscj dksVZ fjV ;kfpdk la0 26294@94 fu.khZr fnukad 17-11-97 ek0 mPp U;k;ky;] bykgkckn ds fu.kZ; dks n`f"Vxr djrs gq, Li"V gksrk gS fd fulUnsg bl vf/kfu;e esa le;k fof/k ugh iznRr gS A fdUrq ek0 mPp U;k;ky; }kjk vius fu.kZ; esa rhu o"kZ dh le;kof/k fuf"pr dh xbZ gS A Jfed ds fy, vko;"d Fkk fd og nsjh ls ekeys dks nk;j djus dk leqfpr dkj.k izLrqr djrk tks mlds }kjk ugh izLrqr fd;k x;k A rnuqlkj bl dze esa Hkh Jfed dk ekeyk Li"V :i ls bls foijhr izHkkfor gksrk gS A

11- rnuqlkj mijkafr fooj.k] lk{; rFkk ifjLFkr;ks dks n`f"Vxr djrs gq;s esa bl fu"d"kZ ij igqaprk gwWa fd Jfed vius dFku dks izekf.kr djus es vIQy jgk gS vkSj ;g ekaxk x;k vuqrks"k ikus dk vf/kdkjh ugh gS A

6. Learned Counsel for the petitioner inspite of repeated request of the court, has not advanced any argument hence this Court has no option to record its findings on the basis of the record appended with the writ petition basis of argument advanced by the learned Standing Counsel for the respondents. After hearing the arguments and on perusal of records in my opinion, the Labour court has rightly come to the conclusion that the employer has a prerogative and right to terminate the service of his employee and that petitioner who was daily wager has no legal right to claim relief of continuity of service with full back wages as he failed to prove his case. The Court had considered the fact that even from the document which had been got summoned by the workman from the employer i.e. the muster roll it is established fact that the workman had not worked more than 240 days continuous service in any of the calendar year and as such Section 6 of the UP. Industrial Dispute Act are not applicable and his disengaged from the service as daily wager is not in contravention of law.

7. Furthermore since the counsel for the petitioner has not pressed the petition, I hold that there is no illegality, infirmity or perversity in the award passed by the labour court and as such finding of facts recorded by the labour court on basis of pleading, orally and documentary evidence of the parties cannot be disturbed in exercise of extra ordinary power in writ jurisdiction. For the reason stated above, the writ petition is dismissed. No order as to costs.