

(2004) 10 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35901 of 2004

S.P.S. Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Central) Rules, 1957 — Rule 42, 43
Uttar Pradesh Industrial Disputes Act, 1947 — Section 25, 6N

Citation : (2005) 6 AWC 5448

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : R.D. Khare, for the Appellant; V.K. Birla and K.C. Sinha and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the respective parties and perused the record.

2. The petitioner has sought a writ of certiorari for quashing of the impugned order of termination/retrenchment dated 25.4.2004 (Annexure 10 to the writ petition) passed by the Managing Director U.P. State Handloom Corporation Ltd., Kanpur (respondent No. 4), besides, a writ in the nature of mandamus commanding the respondent authorities not to retrench him otherwise than in accordance with law. It is further prayed that the respondent-Corporation be directed to decide the representation of the petitioner regarding fixation of his pay scale and seniority within a time frame specified by the Court.

3. The U.P. State Handloom Corporation Limited was established in the year 1973 by the State Government of U.P. and is a Government (Public) Company under Companies Act 1956.

4. Due to change in Textile Policy and overall recession in the global economic

scenario the Government of India curtailed the subsidy on many of the controlled items drastically affecting the business of the Corporation, The economic condition of Corporation became critical and it could not pay the salaries of its employees even for about 3 years. A large number of employees and the Unions of the employees working in the Corporation therefore preferred petitions before this Court as well as Lucknow Bench of this Court for payment of their salaries.

5. In the aforesaid backdrop the Board of Directors of the Corporation took a policy decision to reorganize the business by curtailment of manpower and for adopting such other steps, which may improve the financial condition of the Corporation.

6. The proposal for downsizing of the manpower of the Corporation and its rehabilitation was considered. The relevant extract of the decision in rehabilitation decades is as under:-

"It is proposed to downsize its manpower which has been already brought down from 2323 to 1748 to 599 by way of VRS / CRS / Retrenchment. Reduction, in manpower will be due to closure of Janata Cloth production activities, closure of unviable showrooms and closure of unproductive uncontrolled Cloth production centers-----

----- It is further being made clear that on account of the reason that the business of the Corporation is paralyzed to the extent that neither there was any work for the employees nor any fund to pay the salary to them and as such the Corporation has taken the decision to curtail manpower firstly by giving VRS and thereafter by way of retrenchment. It is again being made clear that the responsibility of the Corporation was increasing day to day for payment of salaries to its employees without even their working. Since the Corporation was not having sufficient work for all the employees and as such it was decided to curtail the manpower either by way of VRS or retrenchment."

7. In order to implement the aforesaid policy decision and rehabilitation package steps to curtail the manpower notices were issued by the Managing Director of the Corporation informing the employees to adopt the VRS otherwise the Corporation will have to resort to retrenchment. The efforts to revive the financial health of the Corporation by adopting the VRS failed, as only about 600 employees opted for voluntary retirement. The Corporation then resorted to retrench the employees to bring down the number of employees to required level by giving the notice of retrenchment-dated 12.4. 2004. The notice was to become effective w.e.f. 15.4.2004.

8. The petitioner was initially appointed on 12.7.1985 as Labour Officer in the Process House of the factory of the U.P. State Handloom Corporation Ltd, (hereinafter referred to as the Corporation) at Khalilabad, Basti. He was transferred to the Head Office of the Corporation at Kanpur vide order dated 9.1. 1986 from the Process House at Basti.

9. The petitioner applied for voluntary retirement on 31.1.2003 under the Voluntary Retirement Scheme. The application of the petitioner was not accepted by the Corporation on the ground that the Corporation required his services.

10. It is submitted by the counsel for the petitioner that from the very date of initial appointment of the petitioner in the Corporation, i.e., 12.7.1985, he was not given the pay scale of Labour Officer in the grade of Rs. 900 - 1750 which is equivalent to the post of Liaison Officer and Assistant Law Officer in the officers' grade, but was placed in lower grade/pay scale of Rs. 775 1360 and that the petitioner made several representations between the period 1998 -- 2003 in this regard, which have remained undecided till date. It is further submitted that vide order dated 6.9.1989 Liaison Officers were granted higher pay scale by respondent No. 4 but the pay scale of the petitioner remained unchanged and that if his seniority is given with the Liaison officers he would be amongst the senior-most officers and he would not be inculcated in the list of employees to be retrenched on the principles of last come first go It is submitted that the action of the management in issuing retrenchment notices of the petitioner is therefore illegal, arb ary and bad in law.

11. A notice of retrenchment dated 6.4.2004 was issued in pursuance of directions of the Secretary of the State of U.P. dated 19.2.2004 to respondent No. 3 to the effect that apart from 599 workmen to be retained the remaining employees be retrenched in order to scale down the employment strength of the establishment which was necessary to revive the Corporation and make it financially viable. The services of the petitioner along with three other officers of the Corporation, i.e., the Company Secretary, the Assistant Law Officer and the Labour Officer were terminated in pursuance of the notice of retrenchment.

12. The notice of retrenchment is assailed on the ground of discrimination, mala fide and colourable exercise of powers. It is submitted that the action of the management is discriminatory, as other officers have been retained in service including some junior officers to the petitioner such as Smt. Anuradha Srivastava and Hira Lal who were appointed in 1988 and 1989 respectively. It is mala fide because the principles of "last come first go" has not been followed and that the termination is in colourable exercise of powers on the ground that the petitioner was the only Labour Officer in the pay scale of Rs. 1940 2900 (Revised Pay scale of Rs. 775 - 1360) in the Legal Cell who was retrenched. It is also staled that after termination of the services of the petitioner an officer of Accounts Department Sri Khalil Ahmad of the same grade as the petitioner, i.e., Rs. 1940 2960 has been subsequently posted in the Legal Cell, It is lastly urged by the counsel for the petitioner that the U.P. Industrial Disputes Act, 1947 is not applicable in so far as the officers of the Corporation are concerned; that the action of the authorities is in gross contravention of law and the policy decision of the Government for absorption of retrenched employees in other Government Departments and that as per rehabilitation package sanctioned by the Central Government as well as State Government it has been categorically specified that

compensation package of Voluntary Retirement Scheme etc. should be adopted in which there is no whisper of retrenchment of employees/officers of the Corporation.

13. It has been strenuously argued that the notice has been published in the daily newspaper for making mass-scale retrenchment categorizing employees in different pay-scales for the purposes of applying the principle of "Last come first go and that the persons, who do not belong to the category of "Workmen, have been included in the list, which vitiates the entire procedure: of retrenchment. It has also been submitted that the Corporation has not adhered to the policy of "Last Come First Go" and in fact junior persons are being retained on the basis of incorrect calculation of seniority, which ought to have been calculated from the date of initial entry in service.

14. The counsel for the petitioner has argued no other point.

15. The petitioner has filed an affidavit on 23.8.2004. In paragraph No. 6 of the affidavit it is averred that one Assistant Manager (Production) Sri Mati Ullah Ansari was transferred to the Legal Cell in June 2004 who is in the same pay scale of Rs. 1940 2900 in which the petitioner is. He has filed a photostat copy of the Attendance Register said to be of the Legal Cell to establish his version, in which names of Sri Harish Chandra, A.L.O., and Sri Mati Ullah Ansari, Assistant Manager (Production) and other staff/clerks of Legal Cell are shown.

16. The petitioner has also made a representation dated 19.4.2004 to the authorities concerned to the effect that his services can not be retrenched, as he is not a workman but is an officer of the Corporation and thus is not covered by the provisions of the U.P. Industrial Disputes Act, 1947. However, the order of retrenchment dated 25.4.2004 was sent to him which is admittedly served upon him on 12.5.2004.

17. The counsel for the respondents submits that though the petitioner was designated as "Labour Officer" he was a workman as defined under the U.P. Industrial Disputes Act, 1947 and was not in officers" grade according to the pay scale in which he was working. It is further submitted that the question of entitlement of any particular pay scale is no longer open in the present petition and in fact rightly so no prayer in this regard that has been made in the present petition. In so far as the contention that One Mati Ullah Ansari has been transferred to Legal Cell, it is submitted on behalf of the respondents that he is Assistant Manager (Production) and his place of working has been shifted temporarily to the office of the Legal Cell and he is not on the strength of the Legal Cell department. He further submits that admittedly the own case of the petitioner is that provisions of Industrial Disputes Act do not apply to his case, as such principles of last come first go contained in Section 25 will not apply and the petitioner can not raise any grievance of this score. It is also stated that retrenchment means termination of service in the wider sense of the word and does not mean retrenchment of workman as defined in U.P. Industrial Disputes

Act, 1947 only. Therefore, broader meaning to the word "retrenchment" has to be given as held by the Hon"ble Supreme Court that retrenchment means termination of service for any reason whatsoever.

18. The counsel for the respondent also contends that as per information available with him no application under the Voluntary Retirement Scheme is pending before the Corporation and the present writ petition is liable to be dismissed not only on the ground of alternative remedy but also on merits. He further submits that the retrenchment order is in accordance with law.

19. The question of termination of employment caused by abolition of posts was considered by the apex court in *Rajendra and Others Vs. State of Rajasthan and Others*, , in which it has been held that: -

"When posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration comes to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the-purpose"

20. The principles of "last come first go" u/s 6-N of the U.P. Industrial Disputes Act, 1947 read with Rule 42/43 do not apply to the petitioner as this is a concept of industrial law and secondly because the petitioner himself has come out with the case that he is not covered by the definition of "workman" under the Industrial Disputes Act. The persons who have been retained in service do not belong to the same category as that of the petitioner. What would have been the pay scale and service of the petitioner, had he been given the pay scale and grade of Liaison Officer in the Corporation from his initial date of appointment or whether he was even entitled to that higher grade can not be gone into by this Court as it would require findings of facts on basis of documentary evidence and oral evidence. This would not be feasible under Article 226 of the Constitution of India. Even otherwise, there is no material much less sufficient material on record to give any finding in this regard. As stated earlier in the judgment notice of termination cannot be challenged in the writ petition and only action of termination can be challenged.

21. The contention of the petitioner that he is not a workman is accepted. The Industrial Disputes Act does not apply to him and, therefore, if any payment has been made to him under the aforesaid Act as a precautionary measure it would not make his termination illegal or legal. The question regarding validity and correctness of the order of termination would be dependent upon the relevant facts and circumstances upon consideration of which the appropriate court may decide the matter.

22. There has been a large scale of termination/retrenchment of services of the

employees for preventing the Corporation from being wound up due to financial crisis. The termination of the petitioner is not a solitary instance. The Corporation has to weed away the "dead wood" from the employees and retain the services of those whose services can be utilized. The strength of the staff is to be rationalized to make the Corporation financially viable. The termination of services of the employee aforesaid to save the Corporation, in the facts and circumstances cannot be termed to be mala fide or in colourable exercise of power in the facts and circumstances of this case.

23. The question whether the reasons given by the employer to retrench some of the employees or retaining per alleged be junior in a particular category of workmen are all questions which can be decided only on the basis of documentary and oral evidence before appropriate forum and not before the High Court under Article 226 of the Constitution of India. The Apex Court in a catena of decisions has held that it is not within the realm of the High Court under Article 226 of the Constitution of India to adjudicate such questions of facts. Questions raised in these petitions require adjudication on facts, which cannot be gone into by this Court under Article 226 of the Constitution of India. Mere notice to retrench cannot be challenged. In any case as follow up action can be challenged by the aggrieved persons before the appropriate forum as has been held in *Rajasthan State Road Transport Corporation and Anr. v. Krsihna Kant and Ors.* , 1995 (V) SC-75, *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others* , *L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others* , *State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd.* , and *Scooters India and Others Vs. Vijai E.V. Eldred* ,

24. In *D. Macropollo and Co. (Private) Ltd. Vs. D. Macropollo and Co. (Private) Ltd. Employees' Union and Others* , *Modern Stores v. Krishnadas*, it has been held that the that an employer has a right to reorganize his business and if such re-organization results in discharge of some employee, it will not be a ground for inference of mala fide

25. For these reasons, this Court is not inclined to interfere in these matters as the petitioner has an efficacious and alternative remedy available to him.

26. The writ petition is therefore, dismissed on the ground of alternative remedy. No order as to cost.