

(2004) 11 AHC CK 0165
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40544 of 1994

Sri Rakesh Kumar

APPELLANT

Vs

Industrial Tribunal(1) U.P.Allahabad & Ors.

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Citation : (2004) 11 AHC CK 0165

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

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

2. The petitioner has prayed for quashing of the award of the Industrial Tribunal dated 2851994 as communicated to him by order dated 2891994. A further prayer has been made for a writ of mandamus directing the respondents to reinstate him on the post of Seechpal with all benefits, privileges and continuity of service.

3. The case of the petitioner before the Industrial Tribunal was that he was appointed in a permanent capacity on the post of Seechpal w.e.f. 3131990. He had joined his duties on 241990 and continued in the employment up to 2441990. Thereafter his services have been terminated/retrenched w.e.f. 2441992.

4. It is submitted by the Counsel for the petitioner that the petitioner came to know that certain posts of Seechpal were vacant and were to be filled up in near future and as such he submitted an application for appointment on the post. He appeared in the written test held on 2031979 and on the same day he was selected after interview. After completing three months" successful training he was issued appointment letter dated 3131990 and joined his services which were terminated on 2441992 in arbitrarily and in colourable exercise of power.

5. An industrial dispute was raised by the petitioner, which was referred by the

Deputy Labour Commissioner, U.P., Allahabad for adjudication to the Industrial Tribunal (1) U.P. at Allahabad (for short "the Tribunal") under Section 4K of the Act. The industrial dispute, which was referred to the Tribunal, is as under:

6. The stand taken by the petitioner before the Tribunal was that his retrenchment from service was illegal, arbitrary, malafide and in colourable exercise of powers as persons junior to him had been retained in service. It was also the case of the workman before the Labour Court that neither any chargesheet was served nor any opportunity was given to him before termination of his services. He had also not been paid onemonth's salary or any notice in lieu thereof.

7. It is urged that the petitioner, however, successfully completed the training and having worked for more than 240 days continuously, the termination of his services without any enquiry was against the principles of natural justice. It is further urged that the termination was in violation of the provisions of Sections 6N, 6P and 6Q of the U.P. Industrial Disputes Act, 1947 as well as Section 25 of the Central Act. The termination/retrenchment of the services of the petitioner was further violative of Rules 42 and 43 of the U.P. Industrial Disputes Act, 1947 (for short "the Act"). He prayed for his reinstatement in service with full back wages and benefits as a consequence of his illegal termination from service.

8. The employer contested the claim of the petitioner before the Tribunal inter alia that he had not been appointed on any post, rather he was engaged from time to time according to need; that his engagement was temporary and for a definite period; that the Government had imposed a ban on appointments and therefore it was not possible to appoint any person or any permanent post including that of the petitioner. It was specifically stated that the post of Seechpal is to be filled up according to the procedure prescribed by the rules and since no post of Seechpal was vacant, there was no question of appointing the petitioner against any permanent vacancy in the aforesaid circumstances. Lastly it was submitted that the petitioner had not worked for more than 240 days in any year as he was engaged for definite period(s) according to exigencies of work and cannot have any claim for permanent appointment. The Industrial Tribunal has given a categorical finding of fact that the petitioner did not file the letter of appointment though he admitted that a letter of appointment was given to him in evidence. The Tribunal was of the view that the appointment of the petitioner was on a temporary vacancy or in a shortterm vacancy and it was not established that the petitioner was appointed on a permanent post. The employer had contended before the Tribunal that the provisions of Sections 6N, 6P and 6Q etc. were not attracted to the facts and circumstances of the present case. The Tribunal held that from other materials on record it is evident that the workman had been engaged only for a definite period in the vacancies caused by promotion of some workman. It further held that from the materials on record it is not established that the concerned workman was in continuous employment since 241990 to 2441992, rather that it was evident that the engagement of the

petitioner was only for specified period and the concerned workman was in service due to the vacancies occurring in the department. The Tribunal has further held that the gap between the two appointments of the workman concerned was such that it cannot amount to artificial breaks to deprive the concerned workman of the benefits of continuous service. The Tribunal has given a categorical finding of fact that the contention raised on behalf of the employer that the concerned workman was only employed for a specified and definite period is correct. The relevant operative part of the award given by the Tribunal is as under:

?(11).....To my mind the termination of the services of the workman concerned has occurred with the expiry of the period agreed upon between the parties. The concerned workman has no lien on the post he has worked. The provisions of Section 6N, 6P & 6Q of the U.P. Industrial Disputes Act are not attracted to the facts of the present case. Even if a workman works for 240 days in leave vacancy he has no lien to the post. In the facts and circumstances of this case I find that the workman concerned has failed to prove his claim of appointment on a permanent post and his continuous service from 2490 to 24492, therefore, he is not entitled to the reliefs claimed. The termination of his services on 2441992 is in accordance with the term of the contract of appointment. Therefore, the provisions of retrenchment are not at all attracted.

(12) For the foregoing discussions the dispute referred to this Tribunal is answered against the workman concerned and that he is not entitled to the reliefs claimed.

However, parties are directed to bear their own costs.

Sd/Justice K.P. Singh

Formerly Judge, Allahabad High Court,

Now Presiding Officer

28594".

9. The Standing Counsel appearing for the respondents submits that it is nowhere proved by the petitionerworkman either before the Industrial Tribunal or before this Court that he was appointed in accordance with the procedure prescribed for recruitment to the post of Seechpal and that he had failed to establish that his appointment was against a permanent post.

10. In view of the categorical finding of fact recorded by the Tribunal on the basis of appraisal of evidence that the workman was not appointed against a permanent post and was only engaged in shortterm vacancies or for a specified and definite period from time to time due to exigency of work and had not worked continuously for more than 240 days, there appears to be no illegality or infirmity in the award given by the Tribunal and that the workman had no lien on any post and he utterly failed to prove his claim before the Tribunal. The

petitioner had only been appointed for a certain short periods in a span of two years. There was no artificial break in his service as has been held by the Tribunal. Even no interim order was granted in favour of the petitioner and he is not in employment since the date of his disengagement from service.

11. In the facts and circumstances and the finding of fact recorded by the Labour Court it is not a case for interference in exercise of powers under Article 226 of the Constitution.

12. For the reasons stated above, the petition is dismissed. No order as to costs.