

(2011) 05 AHC CK 0296

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49328 of 2004

State of U.P. and Another

APPELLANT

Vs

Hind Majdoor Sabha and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7

Constitution of India, 1950 — Article 12, 14, 16

Uttar Pradesh Industrial Disputes Act, 1947 — Section 11A, 25F, 25G, 25H, 6N

Citation : (2011) 6 ADJ 548 : (2011) 6 AWC 5633 : (2011) 130 FLR 642 :
(2012) 1 LLJ 608 : (2011) LLR 1024

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Sudhir Agarwal, J.—Learned Standing Counsel has pressed this writ petition only in so far as the relief of reinstatement has been granted by. Labour Court with 50% back wages and contended that even if the Labour Court was right in holding that workman having completed 240 days in each year, has worked for about four years from 1988 to 1992, was entitled for protection of Section 6N of U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") that would not automatically result in granting relief of reinstatement for the reason that workman was a daily wager, never recruited in accordance with provisions prescribed in law consistent with Article 16 of the Constitution, hence having worked for only four years could not have been allowed reinstatement with 50% back wages for a period of almost 12 years.

2. The workman was disengaged on 1.9.1992 and award was delivered on 4.9.2003 published on 26.4.2004 in Adjudication Case No. 484 of 1994. It is said that the award to this extent is contrary to law laid down by this Court as well as Apex Court in catena of decisions.

3. Sri Siddharth, learned Counsel appearing for Respondent-workman submitted that once it is shown that workman was retrenched u/s 6N of the Act the relief of

reinstatement was obligatory which the Labour Court has granted and, therefore, no interference is called for. He placed reliance on Apex Court's decision in *R.M. Yellatti v. The Assistant Executive Engineer* 2006 (1) UPLBEC 213 and a single Judge decision of this Court in Civil Misc. Writ Petition No. 7133 of 1995, *Rajya Krishi Utpadan Mandi Parishad, U.P. Meerut and Anr. v. The Prescribed Authority, Industrial Tribunal (V), U.P. Meerut and Anr.* 2002 (3) ESC 32 (All). He further contended that Industrial Disputes Act does not make any difference between daily wager, casual, temporary, permanent etc. It talks of only a workman and, therefore, if a workman has wrongly been retrenched he is entitled for protection u/s 6N of the Act and whenever such provision is violated the aggrieved workman must be given the relief of reinstatement and back wages.

4. To my mind the real issue before this Court taken up by learned Standing Counsel has not been appreciated on the part of Respondents. In order to attract protection u/s 6N of the Act it is no doubt true that a workman irrespective of nature of his appointment/employment would be entitled to be retrenched following the procedure prescribed u/s 6N of the Act if he satisfies the condition that he has worked for 240 days in preceding 12 months from the date of such retrenchment. As a matter of proposition on this aspect neither there can be any dispute nor any has been raised, as a matter of fact, by learned Standing Counsel. The nature of appointment as such has nothing to do for application of Section 6N. If one is a workman and has completed 240 days in an year, such a person, if not retrenched in accordance with procedure prescribed in Section 6N, his retrenchment would be illegal.

5. That itself would not end the matter since the question would arise then as to what is the relief which he is entitled for. Whether mere declaration of retrenchment in violation of Section 6N would result in an automatic relief of reinstatement with back wages and benefit of continuity in service or at the time of grant of relief the Court has to examine some other aspects.

6. The real crux lie at this dividing point, i.e., at the time of granting relief and not earlier. I have no doubt in accepting the submission of learned Counsel for the Respondent-workman that Section 6N would apply to a workman irrespective of his nature of employment whether daily wage or otherwise. If he is retrenched without following the procedure prescribed u/s 6N, though he has completed 240 days in a year preceding his retrenchment, it would be illegal if procedure prescribed in the statute is not observed. But that by itself would not result in automatic relief of continuity in service and reinstatement etc.

7. For the purpose of granting relief the relevant aspects which have to be considered are the nature of employment/engagement of workman concerned, the manner in which he was engaged, his right to hold the post, right to continue in service, the wages to which he is entitled etc. If a person is a permanently employed and has been terminated/retrenched without following the procedure prescribed u/s 6N of the Act, in such a case since the workman has a right to the post and right to continue, relief of reinstatement may be justified. But there also

various other aspects, namely, whether industrial establishment is continuing, whether the post on which the incumbent was working, is continuing or not and similar other relevant factors. In a case of casual or daily wage employee, even in ordinary circumstances, he neither has any right to hold the post nor to continue in service. A daily wage employee commences his service in morning and it comes to an end in evening. The very next day he has no right unless the employer chooses to engage him. It is for this reason, law contemplates that a workman in order to attract Section 6N of the Act need not work throughout the year but it would be sufficient if he has worked for 240 days in a year.

8. Existence of post, the manner in which one was engaged, whether engagement was consistent with some statutory provisions prescribing mode of recruitment and selection etc. are other relevant factors which have to be considered while granting relief. These aspects have been referred to and pointed out in a catena of decisions, some of which I may refer hereat.

9. In *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, the Apex Court in paras 22, 41, 45, 46, and 65 has said:

22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6N of the U.P. Industrial Disputes Act.

41. Order 7, Rule 7 of the CPC confers power upon the Court to mould relief in a given situation. The provisions of the CPC are applicable to the proceedings under the Industrial Disputes Act. Section 11-A of the Industrial Disputes Act empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen.

45. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial Court shall lose much of its significance.

46. The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.

65. The judgments and orders of the Labour Court and the High Court are set aside and it is directed that the Respondent herein shall be entitled to 25% back wages of the total back-wages payable during the aforesaid period and compensation payable in terms of Section 6N of the U.P. Industrial Disputes Act. If, however, any sum has been paid by the Appellant herein, the same shall be adjusted from the amount payable in terms of this judgment.

10. In *Jaipur Development Authority Vs. Ram Sahai and Another*, the Court said:

We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of reinstatement with entire back wages. This Court time and again has held that the jurisdiction u/s 11A must be exercised judiciously. The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served Appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be sub-served if instead and in place of re-instatement of his services, a sum of Rs. 75,000/- is awarded to Respondent by way of compensation as has been done by this Court in a number of its judgments.

11. In U.P. State Road Transport Corporation Vs. Man Singh, it was held:

7. ...The Appellant is a statutory corporation and keeping in view the fact that the Respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time.; i.e. after a period of more than 30 years, to direct reinstatement of the Respondent in service. Unfortunately, the Labour Court or the High Court did no consider these aspects of the matter.

8. Keeping in view the particular facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the Respondent together with back wages from 1986, interest of justice would be subserved if the Appellant is directed to pay a sum of Rs. 50,000 to him. Similar orders, we may place on record, have been passed by this Court in State of Rajasthan v. Ghyan Chand, State of M.P. v. Arjunlal Rajak, Nagar Mahapalika (now Municipal Corporation) v. State of U.P., and Haryana State Electronics Development Corporation Ltd. v. Mamni.

12. In Uttaranchal Forest Development Corporation Vs. M.C. Joshi,

We are therefore, of the opinion that keeping in view the nature and period of services rendered by the Respondent herein as also the period during which he had worked and the fact that he had raised an industrial dispute after six years, interest of justice would be met if the impugned judgments are substituted by an award of compensation for a sum of Rs. 75,000/- in favour of the Respondent.

13. In Madhya Pradesh Administration Vs. Tribhuban,

We, therefore, are of the opinion that keeping in view the peculiar facts and circumstances of this case and particularly in view of the fact that the High Court had directed re-instatement with full back wages, we are of the opinion that

interest of justice would be subserved if Appellant herein be directed to pay a sum of Rs. 75,000/- by way of compensation to the Respondent. This appeal is allowed to the aforementioned extent.

14. In Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another,

8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the Appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of noncompliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. Appellant was entitled to compensation notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation.

15. In Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another,

9. The question which however, arises for consideration is as to whether the Labour Court was justified in awarding the relief of reinstatement with full back wages in favour of the workman.

First Respondent was admittedly appointed on a daily wage of Rs. 171-per day. He worked for a bit more than two years. It has not been disputed before us that sanction of the State of U.P. was necessary for creation of posts. The contention of the Appellant before the Labour Court that the post was not sanctioned after 31.3.1990 by the State was not denied or disputed. If there did not exist any post, in our opinion, the Labour Court should not have directed reinstatement of the first Respondent in service.

A statutory authority is obligated to make recruitments only upon compliance of the equality clause contained in Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the

statutory recruitment Rules, if any, would be void. These facts were required to be kept in mind by the labour Court before passing an award of reinstatement.

10. Furthermore, public interest would not be subserved if after such a long lapse of time, the first Respondent is directed to be reinstated in service.

11. We are, therefore, of the opinion that the Appellant should be directed to pay compensation to the first Respondent instead and in place of the relief of reinstatement in service.

16. In *Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute*,

17. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the Appellants in service.

18. Keeping in view the period during which the services were rendered by the Respondent; the fact that the Respondent had stopped its operation of bee-farming, and the services of the Appellants were terminated in December, 1996, we are of the opinion that it is not a fit case where the Appellants could have been directed to be re-instated in service.

19. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor, were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job etc. should weigh with the Court for determination of such an issue.

20. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice.

17. In *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*, the Court said:

It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee, is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

18. Relying on the above propositions, recently in *Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others*, the Court said:

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not,

however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

19. So far as the decisions cited by Sri Siddharth, learned Counsel for the workman are concerned, I find that in R.M Yellatti (supra) what relief should be granted was not the question raised before the Court. Holding the termination illegal, the Labour Court granted relief of reinstatement with 50% back wages. The question raised before the High Court and Apex Court was about the onus upon whom lie to prove that the workman has completed 240 days in a year or not. The decision, therefore, is not an authority on the proposition as to what should be the relief to be granted when a termination/retranchment is found in violation of the procedure for retranchment prescribed in the statute. Moreover, in para 15 of the judgment the Apex Court said that the Court did not grant relief of reinstatement in a manner it applies to a case where termination of a permanent employee is set aside and he is restored to his position as if he was not terminated. The Apex Court said that name of workman will be restored as daily wager in the nominal muster roll. Meaning thereby whenever the requirement is found by employer to engage person in muster roll the workman would be employed accordingly. This judgment, therefore, does not help the respondent-workman at all.

20. The decision of Hon''ble Single Judge in Rajya Krishi Utpadan Mandi Parishad (supra) also has not considered the question as to what relief ought to be granted. The award of Labour Court was challenged in respect to two issues decided by Labour Court namely, whether workman is covered by definition of workman under 1947 Act and whether the employer is an industry. Therefore, this judgment also does not lay down any proposition of law about the relief to be granted which is a question directly considered by the Apex Court in catena of decisions, some of which I have already discussed above and are binding on this Court on the above exposition of law. The two decisions cited by learned Counsel for the Respondent- workman, therefore, lay no credence to his case.

21. In the facts and circumstances of the case since the workman was engaged on daily wage basis only for a short period of four years and was disengaged on 1.9.1992 and also considering the fact that his initial recruitment was not in accordance with procedure prescribed in law consistent with Article 16 of the Constitution, in my view, the relief of reinstatement and back wages to the extent of 50% ought not to have been granted. The workman may be granted a lumpsum compensation which is equivalent to six months' wages and would be calculated on the basis of payment last made to workman at the time of his termination. I order accordingly. This amount shall be calculated by Petitioner and shall be paid to workman within three months from the date of production of

a certified copy of this order. The writ petition is partly allowed. The impugned award dated 4.9.2003 in so far as it directs reinstatement of Respondent-workman with 50% back wages is hereby set aside. No costs.