
(1998) 07 AHC CK 0086
In the Allahabad High Court
Case No : Writ Petition No. 2738 (S/S) of 1998

State of U.P. and others

APPELLANT

Vs

Shyam Lal and others

RESPONDENT

Date of Decision : 07-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6N

Citation : (1999) 1 AWC 697

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard the learned counsel for the parties and also perused the record.

2. By means of this petition under Article 226 of the Constitution of India, petitioners pray for issuance of a writ order or direction in the nature of certiorari quashing the order dated 14.10.1996 passed by Presiding Officer. Labour Court (Tribunal) U.P. Faizabad, partly allowing the claim petition filed by respondent No. 1. Prayer for a writ of mandamus directing the respondent Nos. 2 and 3, not to implement the aforesaid order and not to make recovery of the amount of salary/compensation awarded against respondent No. 4, in pursuance of the letter dated 5.3.1998, have also been made.

3. Relevant facts of the case are that the dispute with regard to the termination of services of the respondent No. 1 was firstly taken to the Conciliation Officer, but parties failed to arrive at an amicable settlement before him. Consequently, the said dispute was referred to the respondent No. 2 u/s 4K of the U. P. Industrial Dispute Act, 1947 (for short the Act) by the State Government for adjudication. It was claimed by the said respondent that he had been working on the post of Chaukidar in the forest department since 1983. His services were illegally terminated on 1.1.1993 without following the procedure prescribed

under the law. It was claimed that the said respondent worked for more than 240 days continuously. The post, which was held by him was a permanent post, the same still exists and persons junior to him were working but his services were illegally terminated. It was also pleaded by the respondent No. 1 that he was entitled to be reinstated with all consequential benefits.

4. Petitioners filed written statement in reply of the claim petition filed by respondent No. 1 pleading that respondent No. 1 has worked in the forest department from 1983 to 31.12.1991 in a temporary scheme funded by the World Bank. Thereafter, on completion of the work, he himself left the job. Therefore, there was no question of giving any notice or paying compensation to him. It was pleaded that the temporary scheme in the department finally came to end on 31.3.1993. Claim petition of the respondent No. 1 was, therefore, liable to be rejected.

5. In support of their cases, parties have produced evidence oral and documentary. After perusal of which respondent No. 2 recorded findings that services of the respondent No. 1 were terminated with effect from 1.1.1992 without following the procedure prescribed u/s 6N of the Act. the respondent No, 1 himself did not leave the Job and worked in the social Forestry Scheme of the Forest department which continued till March. 1993. It was not proved that respondent No. 1 was appointed in any particular scheme. His services were illegally terminated on 1.1.1992. Having recorded the said findings respondent No. 2 directed that in view of the fact that scheme, in which respondent No. 1 was working continued up to 31.3.1993. therefore. there was no question of reinstatement, but he was entitled to arrears of his salary/wages till the aforesaid date.

6. Feeling aggrieved by the order/Award passed by respondent No. 2, petitioners, have approached this Court and filed the present petition.

7. Learned standing counsel appearing for the petitioners vehemently urged that respondent No. 1 himself left the job on 31.12.1991. on which he was working. Therefore, there arose no question of giving him any notice or paying compensation as provided u/s 6N of the Act. It was urged that on the principle of no work no pay. respondent No. 1 was not entitled to any wages/salary. It was also urged that respondent No. 1 was working on daily wages basis. Therefore, he does not come within the definition of workman, and was not entitled to the reliefs claimed by him. In support of his submission, learned standing counsel also referred to and relied upon a decision of Hon''ble Supreme Court in *Saran Kumar Gaur (Smt) and Others Vs. State of U.P. and Others*, .

8. Respondent No. 2 has. after perusal of the evidence on record, oral and documentary, recorded clear and categorical findings to the effect that respondent No. 1 did not leave the job himself. On the other hand, his services were terminated without following the procedure prescribed under the law. It has also been held that the work and the post, on which respondent No. 1 was

working remained in existence and continued till March, 1993. Therefore, there was no Justification for the petitioners to terminate the services of respondent No. 1 on 1.1.1992.

9. Admittedly, the procedure prescribed for termination of services u/s 6N was not followed, as neither any notice was served upon respondent No. 1, nor he was paid retrenchment compensation nor any notice was given to the State Government. Therefore, termination of the services of respondent No. 1 was illegal. Learned standing counsel has failed to point out anything from the record, to substantiate his case that respondent No. 1 himself left the job on 31.12.1991. Findings recorded by respondent No. 2 are all findings of fact, which are based on relevant evidence on record. Section 6N of the Act provides as under :

"6N. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired of the workman has been paid in lieu of such notice wages for the period of notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of Six months, and (c) notice In the prescribed manner Is served on the State Government.

10. Provisions of Section 6N of the Act are mandatory. Without following the same, the services of a workman cannot be terminated. According to the findings recorded by the Labour Court, the respondent No. 1 has worked for more than 240 days continuously. His services, therefore, could not be terminated without following the procedure prescribed under the aforesaid section. Therefore, the termination of the services of respondent No. 1 by the petitioners has rightly been held as invalid and illegal.

11. The Labour Court has also rightly declined to pass order of reinstatement, in view of the fact that the scheme in which respondent No. 1 was working, itself, admittedly, came to end on 31.3.1993. The Labour Court also did not commit any error of law in awarding compensation to respondent No. 1, till the date the work and post in question remained in existence.

12. The submission made by the learned standing counsel that on the principle of "no work no pay" the respondent No. 1 was not entitled to any compensation and the Tribunal has exceeded its Jurisdiction in directing for payment of arrears of wages till 31.3.1993. The facts of Saran Kumar Gaur (Smt.) and others (supra) are distinguishable inasmuch as In the said case the dispute was with

respect to the absorption of retrenched teachers of an Educational Institution. Teachers were absorbed in service under the orders of the Court. It was alleged that after their retrenchment from service the teachers use to visit the Institution but were not permitted to work. Since the teachers were absorbed in service under the orders of the Court and there was nothing on the record to show that they have actually worked in the Institution, therefore, it was ruled by the Apex Court that they were not entitled to their wages on the principle of "no work no pay". In the present case, the services of the respondent No. 1 were Illegally terminated by the petitioners and the said respondent was not permitted to work till 31.3.1993 although the work and the scheme in which he was working remained in existence till aforesaid date, therefore, the principle of no work no pay will have no application In the present case.

13. In view of the aforesaid discussions, writ petition fails and is dismissed in limine.