
(2017) 03 UK CK 0024
In the Uttarakhand High Court
Case No : 1560 of 2012

State of U.P., & Anr.

APPELLANT

Vs

Sri Surendra Kumar, & Anr.

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

[Uttar Pradesh Industrial Disputes Act, 1947](#), [Section 2\(j\)](#), [Section 6\(n\)](#) -
Uttar Pradesh Industrial Disputes Rules, 1957, Rule 42

Citation : (2017) 03 UK CK 0024

Hon'ble Judges : Rajiv Sharma

Bench : Single Bench

Advocate : Bina Pandey, Pradeep Kumar Chauhan

Final Decision : Dismissed

Judgement

1. A challenge has been laid to the Award dated 22.07.2010 passed by the Presiding Officer, Labour Court, Haridwar, in Adjudication Case No.354 of 2009 (Old Adjudication No.123 of 2004).
2. "Key facts" necessary for adjudication of this petition are that the respondent no.1-workman was engaged as a daily wager on 13.01.1990. He was retrenched orally on 30.09.1992. The workman-respondent no.1 raised the industrial dispute. The matter was referred to the Labour Court. The workman filed the claim petition stating therein that he had worked for more than 240 days and he was retrenched without following the provisions of Section 6(N) of the U.P. Industrial Disputes Act, 1947. He was neither issued any notice nor paid any compensation in lieu of the notice.
3. The employer-department filed the reply. According to the reply filed by the employer-department, the workman was engaged in a particular project and the same has come to an end. Learned Labour Court made a reference in favour of the workman-respondent no.1. The retrenchment of the workman held void ab initio under Section 6(N) of the U.P. Industrial Disputes Act, 1947 read with Rule

42 of the Industrial Disputes Rules, 1957. He was ordered to be in service but back wages were denied. Hence, the present petition.

4. The workman-respondent no.1 had placed on record a copy of the muster-roll. He has worked for 233 1/2 days and by adding Sundays and paid holidays, he had completed 240 days.

5. Learned counsel for the respondent no.1- workman submits that the employer-department has also issued certificate in favour of the workman, whereby it is certified that the workman-respondent had worked as Tracer w.e.f. January, 1990 to April 1992. The employer has admitted that workman-respondent no.1 has worked for 240 days. The workman was neither issued any notice nor paid any compensation in lieu of the notice. The retrenchment of the workman-respondent no.1 was, thus, in violation of the provisions of Section 6(N) of the U.P. Industrial Disputes Act, 1947 read with Rule 42 of the Rules, 1957. The workman was never apprised that his appointment was in a particular project.

6. Ms. Beena Pandey, learned Standing Counsel appearing on behalf of State of U.P./petitioners has also argued that the irrigation department is not an "industry".

7. Their Lordships of the Supreme Court in (2013) 16 SCC 16 in the case of "State of Maharashtra and another v. Sarva Shramik Sangh, Sangli and others", have relied upon "Bangalore Water Supply" case and have held that the activities of the Irrigation Department fall within the ambit of "industry". Their Lordships have held as under:-

"26. To begin with, we must note that the workmen concerned were engaged as pump operators and chowkidars, etc. on 25 lift irrigation schemes, which were carrying out the process of pumping water. The process of pumping water is specifically covered under the definition of "manufacturing process" under Section 2 (k)(ii) of the Factories Act, 1948. Thus, the workmen concerned were engaged in a "manufacturing process". Once that is established, it follows that the activity of the undertaking in which they were working, constituted a "factory" within the meaning of Section 2 (m) of the said Act.

Explanation (i) to Section 25-A of the ID Act, 1947, covers "factories" within the definition of an "industrial establishment", and therefore Chapter V-A of the ID Act, 1947 applies to "manufacturing process" of pumping water. Hence, it cannot be denied that the undertaking in which the workmen concerned were employed was covered under the provisions of the ID Act.

27. It is, however, contended on behalf of the appellant that the said undertaking was being run by the Irrigation Department of the first appellant, and the activities of the Irrigation Department could not be considered to be an "industry" within the definition of the concept under Section 2 (j) of the ID Act. As noted earlier, the reconsideration of the wide interpretation of the concept of "industry" in Bangalore Water Supply and Sewerage Board is pending before a

larger Bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in *State of Orissa v. Dandasi Sahu*, referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is received."

8. The workman was never apprised that he was appointed under a scheme/project for a particular period. No contract/agreement was entered with him by the employer to this effect.

9. In (2003) 4 SCC 27 in the case of *S.M. Nilajkar and others v. Telecom District Manager, Karnataka*, their Lordships of the Hon"ble Supreme Court have held that burden to prove the ingredients of sub-clause (bb) is on employer. Employment must be shown to be under a contract which stipulates that it would come to an end with the expiry of the project or scheme and the workers must be shown to have been made aware of such stipulation at the commencement of their employment. Their Lordships further held that the workmen under the project or scheme, subject to satisfying the prescribed conditions, would be entitled to notice and compensation under Section 25-F (b). Their Lordships have held as under:-

"11. It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer- State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like-situations by Industrial Disputes (Amendment) Act, 1984 with effect from 18.8.1984.

12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term "retrenchment" a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term

"retrenchment", and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" de hors the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of "retrenchment".

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of Sub-clause (bb) above said. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of Sub-clause (bb), as stated herein above. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

15. The appropriate provision which should govern the cases of the appellants is Section 25FFF, the relevant part whereof is extracted and reproduced hereunder:-

"25FFF. Compensation to workmen in case of closing down of undertakings.--(1) Where an undertaking is closed down for any reason whatsoever, every workman

who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of Sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section 25F shall not exceed his average pay for three months.

[Explanation: An undertaking which is closed down by reason merely of-

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

1A. [Not reproduced] 1B. [Not reproduced] (2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up, no workman employed therein shall be entitled to any compensation under Clause (b) of Section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service] or any part thereof in excess of six months."

17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in *Shalimar works Limited v. Their Workmen* (supra) that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time without regard to the delay and reasons therefore. There is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in *Shalimar Works Limited v. Their Workmen* (supra). In *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors.* (supra), a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In *Ratan chandra Sammanta and Ors. v. Union of India and Ors.* (supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of

time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Employees Under P and T Department v. Union of India* (supra) the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

10. Learned Standing Counsel for the State of Uttar Pradesh/petitioners has vehemently argued that there is a delay in raising the industrial dispute. However, the fact of the matter is that the employer has not challenged the reference made by the State Government. Moreover, the question of delay can be seen at the time of moulding the relief.

11. There is no illegality or perversity in the Award dated 22.07.2010 passed by the Presiding Officer, Labour Court, Haridwar, in Adjudication Case No.354 of 2009 (Old Adjudication No.123 of 2004).

12. Accordingly, there is no merit in this petition and the same is hereby dismissed.