
(1998) 09 AHC CK 0116
In the Allahabad High Court
Case No : C.M.W.P. No. 108 of 1993

State of U.P.

APPELLANT

Vs

Labour Court, Haldwani and another

RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (1999) 1 AWC 768 : (1999) 81 FLR 319

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Ran Vijay Singh and K.M. Sahai, for the Appellant; Manoj Tiwari and R.B. Singh, for the Respondent

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—By this petition under Article 226 of the Constitution of India, the petitioner State of U.P. challenges an award made by the Presiding Officer, Labour Court, Haldwani and published on 20.10.1992. The respondent No. 2 Deep Chandra was engaged as supervisor on daily wages by the Executive Engineer, Irrigation Division, Haldwani. He worked on that basis during the years 1982 to 1988 for several periods. He was, however, not engaged from 1.9.1989. He raised an industrial dispute and the matter was referred to the Labour Court which has held that the termination of the services of respondent No. 2 is unjustified and illegal and he was entitled to reinstatement. The Labour Court, therefore, ordered that the respondent No. 2 be reinstated with full back wages. This award is challenged in this writ petition. The contention is that the respondent No. 2 was employed on a daily wage basis and had no right to continue in employment and that the irrigation Department was not an industry and therefore, the Labour Court had no jurisdiction. The respondent No. 2 has filed a counter-affidavit and rejoinder-affidavit has also been filed.

2. I have heard Sri K. M. Sahal, learned counsel for the petitioner and Sri Manoj

Tiwari, learned counsel for the respondents.

3. It is not in dispute that Irrigation Department is a Department of the State of Uttar Pradesh and recruitment in the said department is regulated by statutory rules framed by the Government of Uttar Pradesh in exercise of powers, under Article 309 of the Constitution of India. The impugned award as well as the counter-affidavit make it clear that the respondent No. 2 was not appointed to any civil post in accordance with such rules and he was engaged only on a day-to-day basis that is why he did not get salary for all 365 days in a year.

4. As stated in paragraph 5 of the rejoinder-affidavit, he was paid for 61 days in 1982. 268 days in 1983, 289 days in 1984, 325 days in 1985. 299 days in 1986, 328 days in 1987 and 327 days in 1988. The contention of the petitioner is that he having worked for 240 days in a year, his services could be retrenched only in accordance with the provisions of Section 25F of the Industrial Disputes Act which prescribes condition precedent to the" retrenchment of workman. Reliance has been placed on General Manager, Telecom v. A. Srinivasa Rao 1998 SCC 6 and All India Radio v. Santosh Kumar 1998 178 FLR 814. In which the Telecom Department and the All India Radio have been held, to be industries. Reliance is also placed on a judgment of the Hon''ble Calcutta High Court in Westinghouse Saxby Farmer Ltd. v. K. B. Darlami. 1998 (2) ESC 1073 (Cal), in which it was held that an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there. Lastly, reliance was placed on an another judgment of the Hon''ble Supreme Court in Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., , in which a social forestry scheme undertaken by the Forest Department of State Government of Maharashtra was held to be an industry.

5. In my view this case is squarely covered by a judgment of the Hon''ble Supreme Court in Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, , which it was held that where persons are employed for working on daily wages, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act and that the concept of retrenchment cannot be stretched to such an extent as to cover such employees. The employment of the respondent No. 2 being on a day-to-day basis, the same came to an end every evening and there was fresh employment every next day. Therefore, refusal to employ him from a particular day did not amount to retrenchment so as to attract the provisions of Section 25F of the Industrial Disputes Act. In my view, therefore, the Labour Court was not right in holding that the termination of the petitioner''s services was unlawful and unjustified. As discussed above, there was no termination by the employer, i.e., the Government. It was only a refusal to employ further.

6. As stated above, employment to Government service in the Irrigation Department is regulated by statutory rules. Patently, the respondent No. 2 was not employed in accordance with the rules. For engaging a person casually on

day-to-day basis, the statutory rules are not required to be followed under which the posts have to be advertised and only the best from the market have to be picked up keeping in view reservation provided for certain classes. Thus, every eligible person has an opportunity to participate in the recruitment process. This is not so in the case of daily wager in whose case even regulations regarding age, medical fitness, character, etc. are not observed. Therefore, daily and casual workers who are engaged in this regard of all rules cannot be allowed to enter Government service through the back-door and the Labour Courts cannot be allowed to be used as a legal means for such back-door entry. The anomalous situation that the impugned award creates can be seen from the fact that till before his alleged retrenchment, the respondent No. 2 was on engagement from day-to-day. The impugned award makes him a permanent employee with the necessary consequence that he would have to be paid salary for all the 365 days as a regular employee and the other benefits of a regular employment can also not be denied to him. Thus, the award puts him in a much better position than he was before the alleged retrenchment. Such a result is not conceived.

7. For the above reasons, the impugned award is not legally sustainable and was beyond the jurisdiction of the Labour Court. This writ petition, therefore, deserves to be allowed.

8. The writ petition is allowed. The impugned award is hereby quashed. There will be, however, no order as to costs.