
(2007) 11 AHC CK 0134
In the Allahabad High Court
Case No : C.M.W.P. No. 14232 of 2001

State of U.P.

APPELLANT

Vs

Presiding Officer/Labour Court and Another

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 4K, 6N(A), 6N(B)

Citation : (2008) 2 AWC 2133

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.N. Tripathi and Sandeep Mukherji and S.C, for the Appellant; P.C. Singh, M.B. Singh and Sanjay Mani Tripathi and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard.

2. Case has been taken up in the revised list.

3. Heard Sri S.N. Tripathi, learned Counsel for the State Government which has filed the writ petition. Counsel for the workman Respondent No. 2 is not present.

4. This writ petition is directed against an award passed by Labour Court, Rampur dated 23.4.1999 in Adjudication Case No. 127 of 1991. The aforesaid award has been enforced by publication on the notice board on 6.7.1999. It appears from the records that Respondent workman was a daily wage employee in Irrigation Division, Moradabad. He was initially engaged on 1.1.1988 and worked intermittently from time to time upto 31.8.1989. He was not engaged thereafter.

5. The workman raised an industrial dispute alleging that his services has been illegally terminated w.e.f. 1.9.1989 without compliance of Section 6N of the U.P. Industrial Disputes Act, 1947 hereinafter referred to as U.P.I.D. Act. A reference u/s 4K of the U.P.I.D. Act was sent by the State Government to the Labour Court,

Rampur aforesaid regarding the validity and illegal termination of the Respondent-workman. The reference order is as under :

KYA SEVAYOJKON DWARA SHREE SHRAWAN KUMAR SON OF SHRI KISHORI SINGH SAMBANDHIT SHRAMIK KI SEVAYEN DINANK 1.9.1989 SE SAMAPT KIYA JANA UCHIT ATHWA VAIDHANIK HAI. YADI NAHI TO SAMBANDHIT SHRAMIK KIS HITLABH/ANUTOSH KO PANE KA ADHIKARI HAI TATHA ANYA KIN VIVRANO SAHIT.

6. The reference was registered by the labour court as Adjudication Case No. 127 of 1991. On receipt of summons from the labour court, the parties filed their respective written statements. An additional issue was also framed by the labour court on the basis of pleadings of the parties to the effect whether the reference made to the labour court suffers from any infirmity in view of the assertion made in paragraphs 2, 3 and 4 of the written statements filed by the employer.

7. After hearing the parties the labour court by the impugned award dated 23.4.1999 directed reinstatement of the workman on permanent basis with back wages as it found the termination of the services of the workman illegal on the basis of non-compliance of the provisions of Section 6N of the U.P.I.D. Act.

8. The contention of the learned Counsel for the Petitioner is that the workman was a daily wager and the labour court could not have granted relief as permanent employee of the establishment with full back wages and as such the impugned award is vitiated and is liable to be set aside in view of the law laid down by the Apex Court in Executive Engineer (State of Karnataka) Vs. K. Somasetty and others, as well as law laid down by it in Himanshu Kumar Vidyardhi and Others Vs. State of Bihar and Others, in which it has been held that the daily wager had no right to post and their disengagement is not arbitrary and he cannot raise any industrial dispute as daily wager regarding benefits of permanent employee.

9. From a perusal of the impugned award it is apparent that the labour court has been influenced by the span of period of intermittent working of the Respondent workman, i.e., from 1.1.1988 to 31.8.1989, i.e., 1 year 8 months. Before labour court the employer had filed a chart showing the daily engagement of the Respondent on muster roll which shows that in the year 1982-83 the workman has worked for 117 days since 2.4.2006 of continuous service but that chart filed by the employer has been rejected by the labour court on the ground that it has not been proved before it by evidence of the employer.

10. The labour court has then recorded a finding that the workman was issued a certificate by the employer that he had worked from time to time and there was nothing against his work and conduct although this certificate does not show that the workman had continuously worked in the aforesaid period. The labour court then further held that since there is nothing adverse on the record to show that the workman had not continuously worked. The award has been given in his favour. The relevant findings given by the labour court in this regard is as under :

11. It is apparent from the aforesaid extract of the award that the labour court has given contradictory findings. On one hand the labour court has relied upon the certificate issued by the employer filed and proved by the workman by his evidence that he had worked intermittently and on the other hand held that there is nothing adverse to show that the workman has not worked continuously. From the records it is apparent that the workman had worked from time to time on need basis and not continuously as required for application of Section 6N read with Section 2(g) of the U.P.I.D. Act, 1947.

12. Labour court has also committed another illegality in reinstatement of the Respondent workman who was a daily wager, on a permanent post in the establishment, i.e., that he has been granted a relief which was neither claimed by him nor could have been permitted changing his status from a daily wager to that of a permanent employee.

13. Permanent appointment connotes appointment against a sanctioned post on a pay scale in accordance with recruitment/ appointment rules for the post. The irrigation department is a department of the Government. A daily wager cannot be reinstated on a permanent post unless was appointed. There was no material before the labour court that the workman was working on a permanent post before granting him a relief of reinstatement as a permanent employee of the Government department. From the perusal of the record it appears that no such plea also was ever raised by the party.

14. As regards Section 6N of the U.P.I.D. Act, 1947, it provides that 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 the mandatory conditions specified in Sections A and B of the aforesaid Section 6N are fulfilled. Sub-section (c) is only directory and not mandatory.

15. It is apparent that the workman was not in continuous service as is also apparent from his evidence and certificate proved by him which has been stated and not denied by the Petitioner and therefore Section 6N would not be applicable as the services of the workman was daily wager on need basis intermittently from time to time.

For the reasons stated above the petition is allowed. The impugned award of the labour court is set aside. No orders as to costs.