

(2016) 12 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1129 of 2012

State of U.P.

APPELLANT

Vs

Sri Pawan Kumar

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N
Uttar Pradesh Industrial Disputes Rules, 1947 — Rule 12(9)

Citation : (2017) 153 FLR 22

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Mrs. Beena Pandey, Standing Counsel, for the State of U.P./
Petitioners; Ms. Neetu Singh, Advocate, for the Respondent No. 1; Mr. R.C. Arya,
Standing Counsel, for the State/Respondent No. 2

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—The present petition is instituted against the award dated 30.08.2011, rendered by Presiding Officer, Labour Court, Haridwar in Adjudication Case No.139 of 2009 (Old Adjudication No.82 of 2004). It was published on 27.12.2011.

2. "Key facts" necessary for adjudication of this petition are that the respondent no.1 was engaged as Beldar on 01.06.1989. He was retrenched without following the due process of law on 01.05.1991. He raised the industrial dispute.

3. The State Government made a reference to the Labour Court. The claim petition was filed by the workman/respondent no.1. The reply was filed by the employer to the same.

4. The workman has appeared as witness as WW1. On behalf of the employer, Mr. Pal Chand Gupta has appeared as EW1.

5. The learned Labour Court, after giving findings that the workman has completed 240 days" in a block of 12 calendar months preceding his

retrenchment declared the retrenchment of the workman illegal with a direction that the workman shall be deemed to be in service throughout. Hence, this writ petition.

6. The workman was engaged on 01.06.1989. He has completed 253 days" preceding his retrenchment, as per the evidence brought on record.

7. Now as far as the question of whether the Irrigation Department is covered under the definition of Industry or not has already been adjudicated by this Court in the case of "State of Uttar Pradesh v. Prem Dutt Thapliyal and another" 2004 (101)FLR 845., as under:-

"8. So far as the third point is concerned as to whether the Irrigation Department is covered under the definition of the Industry, the matter has already been adjudicated in the case of "State of Uttar Pradesh v. Presiding Officer, Labour Court and another," by the Uttaranchal High Court by his Lordship Hon"ble Mr. Justice P.C. Verma after referring the judgment of the Apex Court in "Des Raj and others v. State of Punjab and others" and "Bangalore Water Supply And Sewerage Board v. A. Rajappa"s case". Relevant paragraphs 13 and 14 of the judgment of the Uttaranchal High Court are quoted below:

"The Apex Court in "Des Raj and others v. State of Punjab and others", after applying the aforesaid text on the nature of activities carried on by the Irrigation Department held that Irrigation Department is an "Industry".

Since the Kalagarh unit is the branch of Irrigation Department, therefore, the same is also an Industry within the definition of "Industry" under the U.P. Industrial Disputes Act in view of the law laid down by the Apex Court in "Bangalore Water Supply and Sewerage Board v. A. Rajappa"s case."

8. Learned Labour Court has relied upon the provisions of Rule 12(9) of the Uttar Pradesh Industrial Rules, 1957, which reads as under:-

Rule12(9). "If the affidavit accompanying the written statement of the union or the workman is not rebutted by the employers, the Labour Court or the Tribunal, as the case may be, shall presume the contents of the affidavit to be true and make an award accepting the facts stated in the written statement."

9. The workman"s statement has not been rebutted by the employer. Since, the workman has completed 240 days" preceding his retrenchment, hence, he was entitled to issuance of notice as well as the compensation, as per Section 6(N) of the U.P. Industrial Disputes Act, 1947.

10. Learned counsel for the petitioners has argued that workman has abandoned his job. There is no material available on record that the workman was ever issued any notice to rejoin his duties, in case, he has abandoned the job. The plea of abandonment is required to be proved like any other fact.

11. Their Lordships of the Hon"ble Supreme Court in AIR 1979 SC (1) in the case of "G.T. Lad and others v. Chemicals and Fibres India Ltd." AIR 1979 SC 582 :

1979 (38) FLR 95 (SC). have held as under:

"6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In *Buckingham Co. v. Venkatiah and Ors.* : (1964) 4 SCR 265: (AIR 1964 SC 1272) it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

Re.-Question No. 2 : This takes us to the consideration of the second question, namely, whether in the circumstances of the instant case, it could be said that the appellants had voluntarily abandoned the service of the Company. It may be recalled that the appellants had along with 229 other workmen gone on indefinite and peaceful strike which ended on October 22, 1972) in response to the strike notice given by the union to the Company to press its demand for re-instatement of its three dismissed leaders and had not only by their letters dated September 21, 1972 and September 26, 1972 unequivocally intimated to the Company that they did not intend to abandon the service but had also returned the cheques sent to them by the Company on account of their leave salary gratuity etc. The appellants stand that the letter of the Company dated September 7, 1972 was received by them on September 20, 1972 and not earlier was never denied or refuted by the Company in the correspondence that passed between the parties. Thus, there was nothing in the surrounding circumstances or the conduct of the appellants indicating or suggesting an intention on their part to abandon service which in view of the ratio of *Gopal Chandra Misra's case* (1978) 2 SCC 301: (AIR 1978 SC 548), can be legitimately said to mean to detach, unfasten, undo or untie the binding knot or link which holds one to the office and the obligations and privileges that go with it. Their absence from duty was purely temporary and could by no stretch of imagination be construed as voluntary abandonment by them of the Company's service. In *Express Newspaper (P) Limited v. Michael Mark* (1963) 3 SCR 405: (AIR 1963 SC 1141) which is on all fours with the present case, it was held that if the employees absent themselves from the work because of strike in enforcement of their demands, there can be no question of abandonment of employment by them. In the present case also the appellant's absence from duty was because of their peaceful strike to enforce their demand. Accordingly, we are of the view that there was no abandonment of service on the part of the appellants.

Re.-Question No. 3: Let us now advert to the last but the most crucial question,

namely, whether the action of the Company in removing the names of the appellants from its rolls during the pendency of the proceedings before the Labour Court in respect of the industrial dispute on the presumption that they had abandoned Company's service constituted an alteration in the conditions of service applicable to them immediately before the commencement of the said proceedings which prejudicially affected them. Although the learned Counsel appearing on behalf of the respondent has taken us through the certified standing orders as applicable to the appellants, he has not been able to point out anything therein to indicate that the company could terminate the services of the appellants on the ground of abandonment of service because of their going on strike in enforcement of their demands. Thus, their being no provision in the certified standing orders by virtue of which the Company would have terminated the services of the appellants in the aforesaid circumstances, the impugned action on the part of the Company clearly amounted to a change in the condition of service of the appellants during the admitted pendency of the industrial dispute before the Labour Court which adversely affected them and could not be countenanced. We are fortified in this view by the aforesaid decision of this Court in *Express Newspapers (P) Limited v. Michael Mark and Anr.* (Supra) where repelling an identical contention to the effect that the failure of the workmen to return to work by a notified date clearly implied abandonment of their employment, it was held that the management cannot by imposing a new term of employment unilaterally convert the absence of work into abandonment of employment. It was further held in that decision that if the strike was in fact illegal, the management could take disciplinary action against the employees under the standing orders and dismiss them. If that were done, the strikers would not have been entitled to any compensation under standing orders but that was not what the appellants purported to do and the respondents were, therefore, entitled to relief."

12. Learned counsel appearing on behalf of the employer has vehemently argued that there is a delay in raising the industrial dispute. 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.

13. The scope of judicial review under Article 227 of the Constitution of India against the award made by the Labour Court, after appraisal of entire evidence brought on record is limited.

14. There is no illegality or perversity in the order dated 30.08.2011. Accordingly, there is no merit in this writ petition and the same is hereby dismissed.