
(2011) 01 AHC CK 0273

In the Allahabad High Court

Case No : Special Appeal Defective No. 39 of 2011

State of U.P. though Principal Secretary Deptt. of Land
Development

APPELLANT

Vs

Vinay Kumar Maurya

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 128 FLR 966

Hon'ble Judges : Vedpal, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant and Vedpal, JJ.—C.M. Application No. 7071 of 2011, the application for condonation of delay has been moved for condoning the delay of five and a half months in filing the special appeal. The grounds mentioned in the accompanying affidavit are sufficient to condone the delay. Accordingly, delay in filing the appeal is condoned.

Heard learned Standing Counsel for the Appellants and Shri Shikhar Anand for the Respondent.

2. State has preferred this appeal, challenging the order passed by learned Single Judge dated 9.7.2010 by means of which a direction has been issued to the State Government to consider and absorb the Respondent on any equivalent post on which he was working in the Purvanchal Vikas Nigam Ltd., Faizabad (hereinafter referred to as the "Nigam") within a given time.

3. In short, the facts of the case are that the Respondent was working with the Purvanchal Vikas Nigam Ltd., Faizabad where he faced an order of termination dated 1.8.1990. Respondent went to the Labour Court where it was found that termination was wholly illegal. Labour Court vide its Award dated 28.9.2001 gave the aforesaid declaration and set aside the same but finding that by that time the Nigam aforesaid had already been closed in November, 1992, therefore, directed

that the claimant-Respondent would be entitled to be paid salary from the date of termination from service till the date when Nigam was closed. Award also made a note of the fact that merely because of the illegal termination of the services of the Respondent, he cannot be deprived of the benefit of retrenched employee which otherwise he would have got in case the termination order had not been passed but left it for employer to consider the absorption at his own discretion.

4. Since the aforesaid award was not being complied with, therefore, the Respondent preferred a writ petition before this Court bearing Writ Petition No. 2947 (S/S) of 2003 which was dismissed after making observation that the Respondent has the remedy before the Labour Court for execution and implementation of the award. It appears that the Respondent did not approach the labour Court for execution of the Award. However, Respondent again filed writ petition No. 2791 (S/S) of 2004 challenging that portion of the award by means of which Labour Court had refused to issue any direction for absorption and to grant future benefits wherein a prayer for remanding matter to the Labour Court was also sought for.

The learned Single Judge found that the Respondent was the employee of the Nigam and he would have been also absorbed like other similarly situated employees but for the reason that he stood retrenched on the date of closure of the Nigam, he was not considered for absorption. Since the Award of the Labour Court had not been challenged by the State, therefore, in view of the finding given by the Labour Court, Respondent should have been treated to be an employee of the Nigam till the date of closure. With the aforesaid finding, learned Single Judge issued directions as aforesaid.

It has been contended by the Standing Counsel that the second writ petition was not maintainable whereas Counsel for the Respondent says that in view of the declaration given by the Labour Court, refusal on the part of the Labour Court to extend the benefit of absorption was per se illegal and therefore the present writ petition was filed. His further submission is that admittedly the order in the earlier writ petition was only for execution for award wherein the Respondent was entitled for payment of salary for a particular period but Respondent having not applied for execution, he has not been able to get his salary. In any case, non-payment of salary would not deprive the Respondent from claiming his right of absorption which otherwise had matured in his favour.

We have considered the arguments raised by the Counsel for the parties.

Admittedly, the Respondent was working in the Nigam. He was a regular employee of the Nigam. If his services had not been terminated in the year 1990, he would have been continued till the date of closure in November, 1992. The result would have been that he would have also been absorbed in the alternative employment as all other employees who were retrenched as a result of closure of the Nigam but due to ill luck of the Respondent his services were

terminated in the year 1990, that is, before the closure of the Nigam, therefore, he could not avail the benefit of the retrenched employee and could not be absorbed in service.

The Respondent challenged the order of termination of his service and the Labour Court found that his termination was bad in law. This declaration was given in the Award dated 20th September, 2001 which also set aside the termination order. In case Nigam had not been closed, normally the effect of such a declaration would have been, reinstatement into service of the Respondent and continuance thereof in the service of the Nigam with all benefits which might have been accorded by the Labour Court but because the Nigam itself faced closure, therefore, the Labour Court could not have ordered for reinstatement into service.

The result of declaring the termination order as bad in law and setting aside the same will be, that the Respondent fell into the same category of the employees who were allowed to continue till the date of closure of Nigam and were given the benefit of absorption in the alternative employment.

5. It does not appeal to reason that an employee who otherwise was entitled for absorption would be deprived of such benefit merely because of the illegal act of his employer.

6. The termination having been set aside by the Labour Court, consequence thereof would naturally and legally follow. It is also taken note of that State did not challenge the award when termination order was set aside therefore no plea can be taken in defence which in fact denies the benefit of the award passed by the Labour Court which flows as a result of setting aside the termination order. In these circumstances, where the Nigam had faced a closure, learned Single Judge has issued the direction for absorption of the Respondent giving the benefit to him of a retrenched employee of the Nigam on the date of its closure. It thus cannot be said that any illegality has been committed by him. We therefore, do not find any ground to interfere with the order passed by the learned Single Judge.

7. The special appeal has no force and it deserves to be dismissed and is accordingly dismissed. Since the order passed by the learned Single Judge, ought to have been complied with and the benefit of the Award passed by the Labour Court should also be extended to the Respondent, we further direct that the direction issued by the learned Single Judge, shall be complied within a maximum period of two months and entire dues including the salary and other permissible emoluments to which the Respondent is entitled under the Award shall also be paid to him, within the same period.