

(2011) 12 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition No. 416 (M/S) of 2011

State of Uttar Pradesh and Another

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(f)

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(g), 6N, 6N

Citation : (2012) 2 UC 2228

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Mrs. Beena Pande, the learned Standing Counsel (U.P.) for the petitioners, Sri Sudhir Kumar, the learned Brief Holder for the State of Uttarakhand/respondent No. 1 and Sri Nagesh Aggarwal, the learned counsel for respondent No. 2. The petitioners have challenged the validity and legality of the award dated 7th September, 2009 passed by the Labour Court, Haridwar in Adjudication Case No. 93 of 2009. The facts leading to the filing of the writ petition is, that the workman raised an industrial dispute in the year 2006. The reference made by the State Government was "whether the employer was justified in terminating the services of the workman w.e.f. 22nd March, 1989? If not, to what relief is the workman entitled to?"

2. From a perusal of the aforesaid reference, it is clear that the validity of the termination order dated 22nd March, 1989 was challenged by the workman, which was raised after a lapse of 17 years.

3. Before the Labour Court, the workman filed his written statement contending that he was employed as a Beldar in October, 1982 in Barrage Nirman Division-1, Haridwar, where he worked till 1984 and thereafter, the workman worked in Upper Ganga Canal Adhunikaran Pariyojna Di-vision-4 till 1989 when his services were abruptly terminated by an oral order dated 22nd March, 1989. In paragraph 2 of the written statement, the workman has asserted that he had worked

continuously for more than 240 days. The workman further contended that no retrenchment compensation was paid to him nor notice or pay in lieu of the notice was provided and consequently, the order of termination was in violation of Section 6N of the U.P. Industrial Disputes Act and that he was liable to be reinstated with continuity in service and with full back wages.

4. The learned counsel for the petitioners appeared and contended that the matter was an old one and that the records are not available and contended that their reply filed before Conciliation Officer/Assistant Commissioner be treated as a reply to the written statement. The workman, consequently, moved an application praying that an award be made in terms of Rule 12(9) of the U.P. Industrial Disputes Rules, 1957 since the affidavit accompanying the written statement of the workman had not been rebutted by the employers.

5. The Labour Court on the basis of the provision of Rule 12(9) held that the written statement of the workman has not been rebutted and therefore, the Court would presume the contents of the affidavit accompanying the written statement of the workman to be true and accordingly, made an award in terms of the written statement. The Labour Court held that since the workman had worked for more than 240 days in a calendar year, his termination was illegal and was therefore, entitled to be reinstated. The Labour Court, however, held that the workman would not be entitled for the wages from the date of termination till the date of the award. The petitioners, being aggrieved by the said award, have filed the present writ petition.

6. Having heard the learned counsel for the parties at some length, the Court finds that the Labour Court committed a manifest error in granting the relief of reinstatement to the workman concerned. The award is manifestly erroneous in law and cannot be sustained. No doubt, the written statement of the workman has not been rebutted by the employers, in spite of which, no relief can be granted to the workman in terms of the averments made in the written statement.

7. In paragraph 2 of the written statement, the workman has asserted that he had worked in various divisions of the employers from October, 1982 till the date of termination, i.e., 22nd March, 1989 and that he had worked continuously for more than 240 days. In the opinion of the Court, this assertion is not sufficient in order to hold that the provision of Section 6N of the U.P. Industrial Disputes Act was not complied with or to give a finding that the workman had worked for more than 240 days in a calendar year. In order to hold that the termination order was illegal and violative of the provision of Section 6N of the U.P. Industrial Disputes Act, it is necessary for the workman to prove or allege that he had worked for more than 240 days in a calendar year. For facility, the provision of Section 6-N and 2(g) of the U.P. Industrial Disputes Act is extracted hereunder:

6-N. Conditions precedent to retrenchment of workmen.-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-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government.

2(g)-."Continuous service" means uninterrupted services, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

8. A perusal of Section 6N would indicate that no workman would be retrenched in an industry who has been in continuous service for not less than one year. "Continuous service" has been defined u/s 2(g) which indicates that a workman, who, during a period of twelve calendar months, has actually worked in an industry for not less than 240 days shall be deemed to have completed one year of continuous service in the industry. In the light of the aforesaid provision, it becomes essential that the workman must allege that he had worked for more than 240 days in a calendar year so that it could be deemed to be treated as having completed one year of continuous service in the Industry. This has not been averred by the workman.

9. In Mohan Lal Vs. Management of Bharat Electronics Ltd., , the Supreme Court held that 240 days is required to be counted backwards from the date of the alleged termination. The Supreme Court further held that the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. The workman must put in continuous service for not less than one year and only then his case would be covered by the provision of Section 25(f) of the Industrial Disputes Act, which is pari materia to Section 6-N of the U.P. Industrial Disputes Act. The Supreme Court further held that the period of 240 days has to be counted within the period of twelve calendar months commencing and counting backwards from the relevant date, i.e., the date of retrenchment. In the present case, there is nothing to indicate that the workman had worked for more than 240 days immediately preceding the date of retrenchment, that is to say, that there is nothing to indicate that he had worked for more than 240 days from the date of termination counting backwards. In the light of the aforesaid, the Court

finds that the finding of the Labour Court that the workman had worked for more than 240 days in a calendar year, is perverse and based on no evidence. Consequently, the impugned award cannot be sustained and is quashed. The writ petition is allowed.