
(2015) 08 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition No. 1451 (MS) of 2012

State of Uttarakhand and Others

APPELLANT

Vs

Mahendra Singh and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (2015) 147 FLR 513 : (2015) 3 LLJ 755

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : B.D. Kandpal, Deputy Advocate General, for the Appellant; Pankaj Miglani, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J—Present petition is filed assailing the judgment and award dated 04.08.2011 passed by Labour Court, Haridwar whereby reference was answered in favour of workman/respondent No. 1 and he was directed to be reinstated with salary and other allowances from the date of award. As per the case of workman/respondent No. 1, he has been engaged on muster roll purely on temporary basis to work as Beldar with effect from 03.02.1984 and he had worked continuously till 31.12.1986. However, he was discontinued orally with effect from 01.01.1987. It was pleaded before the Labour Court as well as this Court that petitioner No. 2 undertakes various research projects in the Irrigation Department and whenever need is felt to engage Beldar to undertake physical work to carry out various scientific and research projects, people are engaged purely on temporary basis during the period of research and scientific projects. It is further stated that workman/respondent No. 1 had worked on various dates with the Department purely on temporary basis on muster roll between March 1985 till February, 1986.

2. Labour Court having observed that workman/respondent No. 1 had worked

continuously for 240 days including Gazetted holidays and Sundays came to the conclusion that retrenchment/discontinuance of respondent No. 2 was illegal and in violation of Section 6-N of the U.P. Industrial Disputes Act, 1947 and answered the reference in favour of workman/respondent No. 1. Feeling aggrieved, petitioner Department has approached this Court by way of present writ petition under Article 227 of the Constitution of India.

3. I have heard Mr. B.D. Kandpal, Deputy Advocate General for the State of Uttarakhand/petitioners and Mr. Pankaj Miglani, Advocate for workman/respondent No. 1 and have carefully perused the record. It is important to mention here that case of the workman/respondent No. 1 before the Labour Court as well as before this Court is that workman/respondent No. 1 had worked continuously till 31.12.1986. However, there is absolutely no evidence to suggest that in fact, workman/respondent No. 1 had worked with the Department in any capacity prior to March, 1985 and after February, 1986.

4. Section 2(g) and 6-N of the U.P. Industrial Disputes Act, read as under:

"2(g) "Continuous Service" means uninterrupted service, and included service which may be interrupted merely on account of sickness or authorized 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."

"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 the 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."

5. As per Section 2(g) of the Act, continuous service means uninterrupted service for the period of 12 calendar months wherein workman has worked for not less than 240 days. Interruption in service on account of sickness or authorized 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, shall be counted for the purpose of counting 240 days.

6. As per Section 6-N of the Act, 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 workman has been given one month's notice in writing indicating therein 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 the notice. However, no notice is required, if retrenchment is under an agreement, which has specific date of termination of service. It further provides that at the time of retrenchment, compensation shall also be paid, which will be equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months.

7. Let me now examine as to whether workman/respondent No. 1 can be said to be in continuous service, as defined under Section 2(g) of the Act, prior to his retrenchment.

8. As per material produced before the Labour Court, workman/respondent No. 1 had worked in different months for different days, as indicated in the chart, which is reproduced here in below:

Year 1985

Year 1986

9. Although all the Gazetted holidays and Sundays shall be counted for the purpose of counting 240 days, however, in the present case, since petitioner had worked for only 14 days in the month of March, 1985, therefore, at the most, only 2 Sundays may be counted. Likewise, in the month of April 1985, June 1985, September 1985, November 1985 and December 1985, only two Sundays may counted while for the month of May 1985, August 1985, October 1985, three Sundays may be counted. Likewise, in the month of January, 1986 and February, 1986 at the most two Sundays may be counted. If all the Sundays, as discussed hereinbefore, are counted, workman/respondent No. 1 had not worked for more than 240 days, therefore, he cannot be said to be continuous in service for one year, prior to his discontinuation on 01.01.1987, as claimed by workman/respondent No. 1.

10. There is another aspect of the matter. Workman/respondent No. 1 is not engaged in any manufacturing unit rather is engaged in scientific and research work project and workman/respondent No. 1 was engaged purely on temporary basis, whenever physical work was required to be done for the purpose of research and scientific work that too on muster roll, therefore, considering the nature of work, workman/respondent No. 1 cannot be said to be in continuous service. Consequently, award passed by the Labour Court does not sustain in the eyes of law.

11. In result, petition succeeds and is hereby allowed. Impugned judgment and award dated 04.08.2011 is hereby set aside. CLMA Nos. 7055 of 2012 and 8808 of 2015 also stand disposed of accordingly.