
(2021) 11 UK CK 0134
In the Uttarakhand High Court
Case No : Writ Petition No. 27 (MS) Of 2012

Sunil Kumar

APPELLANT

Vs

Presiding Officer And Another

RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

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

Citation : (2021) 11 UK CK 0134

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : M.C. Pant, Suyash Pant, Pankaj Miglani

Final Decision : Allowed

Judgement

S.K. Mishra, J

1. Heard Shri M.C. Pant, Advocate for the petitioner, Shri Suyash Pant, Standing Counsel for the State of Uttarakhand and Shri Pankaj Miglani, Advocate for the respondent no. 2.

2. Petitioner, in this case being a workman, has prayed for issuance of writ of Certiorari quashing the impugned award dated 07.09.2001 passed by Presiding Officer, Labour Court, Dehradun in Adjudication Case No. 14 of 2000 and further to quash the termination order dated 31.03.1999 (Annexure No. 2) and to issue a writ of Mandamus to reinstate the petitioner with all consequential benefits and back wages.

3. The facts of the case are narrated, date-wise, as follows:

On 02.12.1996 - The petitioner was initially appointed, on probation, as Assistant to the Carpenter by respondent no. 2.

On 01.10.1998 - The period of probation was extended till 31.03.1999 by the respondent no. 2.

On 17.03.1997 - The petitioner made complaint to SSP, DLC and DM.

On 31.11.1998 - All the Class IV employee working with respondent no. 2 raised their seven points' demand before DLC, Dehradun.

On 20.01.1999 - The Presiding Officer, Labour Court deprived the petitioner from the benefit of 5th Pay Commission.

On 31.03.1999 - Services of the petitioner were terminated.

On 17.01.2000 - Reference was made.

On 07.09.2001 - Impugned award was passed by Labour Court in Adjudication Case No. 14 of 2000.

4. The workman, in his claim statement dated 05.07.2000, has specifically raised a ground that he had completed 240 days' continuous service and hence, his service cannot be terminated without complying with the mandatory provisions of Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947. The parties led their evidence both oral and documentary and finally, the impugned award was passed on 07.09.2001 dismissing the claim of the workman on the ground that he was on probation and was a termination simplicitor, hence, the respondent no. 2, herein, has not committed any illegality in terminating the services of the petitioner.

5. It may be appropriate to note here that the Labour Commissioner, Dehradun has referred the industrial dispute to the Labour Court for determining the following terms of reference:

"???? ???????? ???? ???? ???? ???? ???? ???? ???? ???? ???? ????
 ??????? ?? ?????? ?????? 31-03-1999 ?? ?????? ??? ???? ?????/??????? ??
 ?? ?? ?? ??? ?????? ??? ??????/?????? ??? ?? ?????? ?? ?? ??? ?? ?
 ? ???"

The aforesaid reference is translated in English by this Court, which reads as follows:

"Whether the termination of the workman - Sunil Kumar, son of Chedi Lal, Assistant to Carpenter by Management on 31.03.1999 was illegal and unconstitutional. If yes, to what relief workman is entitled for."

6. Learned counsel for the respondent no. 2 has drawn attention of this Court to the additional affidavit filed by respondent no. 2 in pursuance of the direction given by this Court on 27.10.2021. It is apparent from the affidavit filed by the respondent no. 2 that followed no specific procedure in assessing that petitioner was not competent to discharge his duties and his services were terminated only on the ground that the Carpenter, with whom he was attached, made certain complaints regarding his conduct. It is also apparent from the affidavit that no fresh appointment has been made to the post of Assistant to the Carpenter, however, another Class IV employee has been attached to the Carpenter to assist

him in his work.

7. It is not disputed in this case that the petitioner had worked as Assistant to the Carpenter for 2 years 3 months and 29 days i.e. from 02.12.1996 to 31.03.1999. Thus, in such a situation, the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 shall be applicable in this case.

8. Learned counsel for the petitioner has brought to the notice of this Court, the judgment rendered by the Coordinate Bench of this Court in Writ Petition No. 1427 of 2017 (Uttarakhand Jal Sansthan and another Vs. Presiding Officer, Labour Court and another) decided on 05.10.2021 wherein the learned Single Judge took into consideration the definition of "workman" as defined in Section 2 (z) of the U.P. Industrial Disputes Act, 1947 and came to the conclusion that a person appointed on probation is also a workman and is entitled to the protection available to the workman. The learned Single Judge has also relied upon the judgment of Hon'ble Allahabad High Court in the case of Micro Abrasives (India) Ltd., Dhampur, District Bijnore Vs. Dhanvir Singh and another reported in 2001 UPLBEC 669 and came to the conclusion that the said Act is applicable to such disputes arising in the State of Uttarakhand.

9. It is also apparent from the records that though the workman has raised a specific plea about non-compliance of Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947, there are no findings by the learned Presiding Officer, Labour Court on this score and he directed himself to decide whether a probationer should be allowed to continue or not? It is not disputed in this case that in the present retrenchment, the requirements as envisaged in Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947, has not been complied with. Hence, the termination simplicitor, as has been termed by the learned Presiding Officer, Labour Court, Dehradun is illegal, on the face of the record. However, instead of passing an order of reinstatement, this Court is of the opinion that since more than 22 years are elapsed from the date of illegal termination of the workman and there will be a heavy financial burden on the Management, coupled with the fact that some employees may have to be removed from services and in consonance with the present trend of the judgments passed by the Hon'ble Supreme Court in similar cases, a compensation of Rs. 4,00,000/- should be paid to the petitioner in lieu of order of reinstatement. Thus, on ultimate analysis, the writ petition is allowed. The award passed by the learned Presiding Officer, Labour Court, Dehradun dated 07.09.2001 is hereby quashed.

10. It is further held that the termination order issued by respondent no. 2 i.e. Principal of St. Josephs Academy, Rajpur Road, Dehradun is illegal and violative of Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947 and therefore, the petitioner is entitled for compensation. Respondent no. 2 is directed to pay a sum of Rs. 4,00,000/- as compensation to the petitioner within a period of two months hence, failing which it shall carry a penal interest @ 8% per annum from the date of termination i.e. 31.03.1999 till the actual payment of compensation.

11. There shall be no order as to costs. Urgent certified copy of this order be supplied to the learned counsel for the parties, as per Rules.