

(2004) 08 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8077 of 1988

Surendra Kumar

APPELLANT

Vs

Labour Court and Adhishashi Abhiyanta, U.P. State Electricity Board

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2004) 08 AHC CK 0027

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : K.P. Agrawal, A.K. Sinha and Sarita Jhingan, for the Appellant;
Ranjeet Saxena and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.

Heard Sri K.P. Agarwal, learned Senior Advocate, along with Miss Santa Jhingan, learned counsel for the petitioner and Sri Ranjeet Saxena, learned counsel along with Sri Vinay Singh, learned counsel for the respondents.

1. In this petition prayer has been made for issuance of writ of certiorari to quash the award dated 30.11.1987 passed by Presiding Officer, Labour Court at Agra (Annexure 6 to the writ petition), whereby the petitioner kept on contractual deployment of daily wagers muster roll employee working absolutely temporarily in absence of work and on the fact findings that the petitioner had not completed 240 days in a calendar year has been removed and by the impugned award the observances of provision Section 6-N of the U.P. Industrial Deputes Act in short Act was said to be not necessary before dispensation of deployment of the petitioner.

2 According to the petitioner a reference was made to the Labour Court for

adjudication as below:-

" Kya Sewayojkon Dwara Apne Shramik Surendra Kumar Putra Sri Ramesh Chandra Sharma Ko Dinak 11-11-77 Se Karva Se Prathuk. Vanchit Kiya Jana Uchit Tatha/Athwa Vaidlianik Hai/ Yadi Nahin To Sambandhit Shramik Kya Labh/ Anutosh (Relief) Pane Ko Adhikari Hai Tatha Kis Anya Vivran Sahit?"

3. According to the petitioner, admittedly he was working as a daily wager/muster roll employee after having been deployed on 28.1.1977 and had worked upto 11.11.1977, thereafter, also he was allowed to work and he had worked in the year 1979 also and had rendered service for more than 400 days. According to the petitioner he was deployed for 45 days in the year 1978 when he approached authorities again after availing medical leave from 1.6.1979 to 15.8.1979 he was not re-employed, whereas, such contention are controverted for and on the respondent by saying that petitioner was deployed on day to day basis and his deployment commenced in the morning and came to an end in the evening. He was not deployed in adopting any procedure prescribed for. He was deployed from 28.1.1977 to 11.11.1977 on daily wager, by oral order and when the work was not available his contractual employment was not renewed. The petitioner was not engaged after 11.11.1977 as such he had not completed 240 days in a year, therefore, no notice was required to be given in view of provisions of Section 6-N of the "Act" and petitioner was not entitled to any retrenchment allowance/compensation.

4. It has been contended on behalf of the petitioner that to attract the Section 6-N of "Act" or Section 25F of Industrial Disputes Act 1947 the legislation is not made any discrimination between daily wager/muster roll as well as to the regular employee. According to Sri K.P. Agarwal, learned counsel for the petitioner in case a person either deployed on daily wager/muster roll, or as temporary employee who has completed 240 days, the observance of provisions of Section 6-N of Act before retrenchment is necessary. In support of his contention learned counsel for the petitioner has placed reliance on State of U.P. and Another Vs. Rajendra Singh Butola and Another, where the writ petitioner had worked for several years as daily wager and in reference of dispensation of his deployment the Supreme Court indicated that the proper procedure of retrenchment was not followed, therefore, the termination order was set aside and the writ petitioner was re-instated with full back wages. The facts and circumstances of Rajendra Singh Butola (supra) were different as he had worked four years and the dispute whether he had worked more than 240 days or not was not in question. In those, circumstances the reinstatement was directed to be made by the Supreme Court, in my respectful consideration the verdict of Rajendra Singh Butola (supra) does not help in the facts and circumstances of the present case.

5. Learned counsel for the petitioner has referred and relied upon Management Of MCD Vs. Prem Chand Gupta and Another, where the writ petitioner earlier deployment for one year even before confirmation was re-appointed after short

Break (not for fixed period) against vacant post the termination of another employee (however was allowed) to continue for further 18 months, preceding impugned termination order, however, the termination was said to be retrenchment and the petitioner being treated as workman was directed to be re-instated without back wages. The facts of case of Prem Chandra Gupta (supra) were absolutely different as he had completed 240 days and was kept under employment against the permanent vacant post. Whereas, the petitioner's appointment here was absolutely as daily wager muster roll and was never made against the vacant post.

6. Learned counsel for the petitioner has placed reliance on S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, the decision of Supreme Court. (D.B.) in paragraph 14 has held that the engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was last only for a particular length of time or up to the occurrence of some event, and, therefore, the workman ought to know that his employment was short-lived. The Contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of Sub-clause (bb) abovesaid. In the case at hand, the respondent employee was failed alleging and proving the ingredients of Sub-clause (bb) as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellant amounted to retrenchment. S.M. Nilajkar (supra) in special facts and circumstances when the burden of deployment was on the employer to show that the deployment of workman in Government project or scheme was under a stipulated contractual manner and the workman employee was made aware of such stipulation at the commencement of his deployment otherwise mere proof of employment of casual worker or daily wager in a project or scheme and termination of service from the project or scheme coming to an end was not enough to attract the Section 2(bb) of Industrial Disputes Act and the termination was said to be retrenchment. Here also the facts and circumstance's are different. The petitioner was admittedly deployed on daily wager and the employer-respondent was not to prove the status of the petitioner therefore, the verdict of Supreme Court in Nilajkar (supra) does not protect the petitioner.

7. On the other hand learned counsel for the respondent has placed reliance on decision of Supreme Court (D.B.) in The Range Forest Officer Vs. S.T. Hadimani,

where in respect of question of termination whether the incumbent writ petitioner had completed 240 days in a calendar year, the burden was on the employee to prove that he had rendered service for 240 days. Since the claim made on behalf of the employee that he had worked 240 days was emphatically denied by the management/employer it was the burden on the employee that he had worked 240 days and finger of affidavit in support of the claim of any employee that he had worked 240 days could not be treated to be sufficient evidence. In my respectful consideration the verdict of the Supreme Court given in Hadimani (supra) protect the version of the respondent.

8. According to the respondent, in view of the decision of Supreme Court [2002 (2) SCC 400 (Essen Deink v. Rajiv Kumar)] when admittedly the writ petitioner had not completed 240 days continuously in a calendar year because of participation in a strike on 240 days held on facts the compliance of Section 25F not required while terminating the service of the petitioner. The Supreme Court in the case of Essen Deinhki (supra) has relied on M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another, as well as (1988) 4 SCC 71 Workmen v. American Express International Banking Corporation as well as case of Badimani (supra) Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, as well the decision of Mani Nariman Daruwala alias Bharucha (Deceased) through Lrs. and Others Vs. Phiroz N. Bhatena and Others, .

9. According to learned counsel for the respondent where the deployment of a person for a fixed period as indicated in the appointment letter was automatically terminated on the expiry of stipulated period of deployment. Since person had not work for 240 days as such he was not covered in the definition of "workman" under U.P. Industrial Disputes Act as well as Industrial Disputes Act and compliance of provisions of Section 6-N of U.P. Industrial Disputes Act and the provisions of Section 2(oo)(bb) of the Industrial Disputes Act was not necessary as observed by this court in 2002 E.S.C 11 (Lalji Singh Yadav and Ors. v. Presiding Officer, Labour Court, Varanasi and Anr.).

10. The Supreme Court in a Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, has held as below:-

"Every department of the Government cannot be treated to be industry. When the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded. The petitioners were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary Employees wording on daily wages Their disengagement from service can not be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment therefore can not be stretched to such an extent as to cover these employees. Since the petitioner are only daily-wage employees and have no right up the posts, their disengagement is not arbitrary."

11. I have heard learned counsel for the parties. As indicated in the award given

by learned Labour Court taken into consideration trip avernments and facts of the records where the petitioner had not worked 240 days in a calendar year before the termination order was passed and onus was on the employee petitioner to prove that he had worked beyond 240 days, whereas the petitioner has failed to do so. Therefore, when the work, was not available and non renewal of contractual deployment was neither illegal nor retrenchment in view of the decision of Supreme Court in Escorts Limited v. Presiding Officer, (1997) 11 SCC 521 following an earlier decision of Supreme Court in M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, . Similar view was also taken by the Supreme Court in State of Rajasthan and others Vs. Rameshwar Lal Gahlot, , where termination of appointment after expiry of specified period was held valid not attracting the provisions of Section 25F of Industrial Disputes Act, 1947 unless the termination was found to be made malafide or in colourable exercise of powers. Similar view was also taken by the Supreme Court in Executive Engineer v. Madhukar Purshottam Kolharkar, (2000) 2 LLJ 1410SC . I find force in the contention of learned counsel for the respondents. The impugned award has been passed on analysis of material and on proper appreciation of the evidences on records, therefore the fact finding arrived at by Labour Court requires no interference. I do not find any illegally or impropreity in impugned award. The writ petition is dismissed.