
(1992) 09 AHC CK 0100

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2010 of 1991

Suresh Chand Gupta and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 18-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 25, 25F, 6M, 6N

Citation : (1992) 4 AWC 40 Supp

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Allowed

Judgement

N.L. Ganguly, J.—Suresh Chand Gupta, Rajendra Prasad and Ramjiyawan Petitioner nos. 1 to 3 filed this writ petition seeking relief from this Court that a writ, order or direction in the nature of certiorari quashing the termination order, if any by the Respondents be issued. The other prayer is for issuing a writ of mandamus directing the Respondents not to interfere with the duties of Petitioner and pay salary to him as and when it falls due. Lastly a prayer for regularisation of the petitioners' services is also made.

2. The Petitioners were appointed as Choukidars on Daily wages on 13-1-86, 1-8-86 and 16-12-86 respectively by the Additional Distt. Magistrate (Planning), Basti. The initial appointment letter given to the Petitioners was for three months at the rate Rs.10/- as daily wages for guarding the cement godown at the District Hospital Compound, Basti. It was also made clear that the petitioners' work may be ceased before expiry of three months also. However, it has been stated that the Petitioners continued to work as Chaprasis IV class employees. The Director (Planning) District Rural Development Agency, Basti by an order dated 5th March 1989 directed to attach the Petitioner no. 1 with N.R.I.P. Department, Petitioner no. 2 was attached to the Chief Clerk and Petitioner no. 3 has annexed a copy of

the identify card signed by the Director of Planning, District Rural Development Agency Basti dated 27-10-90 showing that Petitioner no. 3 is working as U.P. Government employee since 15-12-86. The Petitioners stated that they have continuously been working with the Respondents. It has been stated that Petitioners worked upto 31-12-90 at the office of N.R.E.P. Department continuously and was paid salary for the period upto 31-12-90.

3. The grievance of the Petitioners is that without any termination order terminating the services of the Petitioners, the Respondents stopped the Petitioners permitting to work on their post The Respondents have also struck off the names of the Petitioners from the attendance register w.e.f. 1-1-91. The Petitioner have annexed photostat copy of the attendance register with the writ petition as Annexure 4 which clearly shows that names of the Petitioners was originally written at serial no. 5, 8 and 10 which have been scored off, still it is very distinct and can be read without any difficulty that the names were written and latter on scored off.

4. The Petitioner's case is that they have continuously worked for more than 240 days and their services cannot be terminated unless the Respondents gave notice and complied with the provision of section 6M of U.P. Industrial Dispute Act and section 25 of the Industrial Disputes Act. " It has been specifically stated that no termination order terminating the petitioners' services was ever passed and the action of the Respondents not permitting them to work is wholly illegal and unwarranted. The Respondents have no legal justification in scoring off the names of the Petitioners from the attendance register. It has been urged by Sri Madhyan, learned Counsel for the Petitioners that three persons have continuously worked for about three years and each year they have continuously worked for more than 240 day. The submission is that daily wage workers stood regularised whose services cannot be terminated in the manner it has been done.

5. A counter affidavit has been filed on behalf of the Respondents by Sri M.P. Gupta, head clerk in the office of the District Rural Development Agency, Basti. No doubt, the Respondents in their counter affidavit have denied the averments of the writ petition that the Petitioners have worked continuously for more than 240 days. It has also been stated that the provisions of Industrial Disputes Act are attracted in the instant case. The Petitioners should approach the Labour Court under the provisions of the Industrial Disputes Act. It has also been pleaded that writ petition is not maintainable in view of alternative remedy available.

6. Before dealing with the other questions raised in the present writ petition and counter affidavit, it would be relevant to mention that the writ petition was filed on 25th January 1991 and the Court was pleased to entertain the writ petition directing the Respondents to file the counter affidavit. Counter affidavit has also been filed on 5-3-91 to which a rejoinder affidavit has also been filed on 3rd April 1991. These dates show that this Court had been taken cognizance in the matter for more than 1 1/2 years back. This Court had not rejected the writ petition on

account of alternative remedy. The Petitioners have been waiting for hearing and decision in the present writ petition during this period. No doubt, the Full Bench decision of our Court in Chandrama Singh v. Managing Director, U.P. Co-operative Union, Lucknow 1991 2 UP LB & EC 898, clearly lays that workman retrenched in violation of conditions stipulated by section 25F or 6N of the Industrial Disputes Act/U.P. Industrial Disputes Act. Such retrenchment may be challenged ordinarily under the provisions of the Industrial Disputes Act before the Labour Court. The remedy under the provisions of the Industrial Disputes Act is an adequate and efficacious remedy available to the person aggrieved by an illegal retrenchment ordinarily. Of course, the aggrieved person can always prove on the facts and circumstances of his case, that the remedy is neither adequate nor efficacious, unless he discharges the onus of proof that the remedy of reference is either inadequate or inefficacious, he should persuade the remedy of reference under the Industrial Disputes Act. The judgment of the Full Bench emphasised :

At this juncture, it would be pertinent to emphasise that it would not be enough for the person pleading inadequacy or inefficacy of the relief of reference under the Industrial Disputes Act to make merely a bald statement and the remedy of reference is either inadequate or inefficacy. It is imperative for him to clearly plead, demonstrate and prove as to how and in what manner the remedy of reference is inadequate or inefficacious and in the absence of requisite pleading and material in respect thereof, it would not be permissible for him to raise such plea of inadequacy or inefficacy of the remedy of reference under the Industrial Disputes Act.

7. Since this Hon"ble Court had already been taken cognizance and entertained the writ petition and the parties exchanged affidavits, I do not think it to be just and proper to throw out the petition on the grounds of alternative remedy. A Division Bench case Shailendra Singh v. National Thermal Power Corporation. 1986 UP LB EC 691, Hon. R.M. Sahai, J. (as he then was) was pleased to observe that :

Three years" elapsed since the petition is filed and admitted directing the Petitioner to go and seek reference before the Labour Court when they were out of employment and facts do not appear to be disputed, it would be too harsh and unjust to refuse to entertain the writ petition on the ground of availability of the alternative remedy.

In view of the aforesaid decision, I also feel that it would not be in the interest of justice to refuse to entertain under Article 226 only on the ground of alternative remedy after a lapse of sufficient time from the date of filing of the writ petition. No doubt, it is correct that this Court under Article 226 would not entertain into disputed questions of fact and decide the writ petition after appreciating documentary evidence and oral evidence as a labour Court or any Court. Thus, while examining whether the facts as averred in the writ petition can be taken to be undisputed and this Court may preceed to decide the writ petition assuming the facts to be correct and undisputed. In the writ petition, it has been

specifically pleaded that Petitioners have worked more than 240 days in a year and they have worked more than one thousand days with the Respondents. The submissions is that their services automatically stood regularised in the cadre. These averments have been denied in the counter affidavit filed by the opposite parties which may apparently show that the writ petition requires investigating into the facts of the case. But the facts and documents annexed with the writ petition that Petitioners have been paid bonus on 2-1-90 in pursuance of the GO. No. WE-Aa-1-3249/Das-52 (M)/20 dated 15-10-90 by the State Government, a correct copy of which has been annexed as Annexure 8 shows that all State Government Employees and Educational, Technical, aided institutions, employees of the Local Bodies and casual/daily wage earner shall be paid bonus of 27 days wage for the year 1989-90. The Petitioners have also annexed copy of the order of the Director (planning) District Rural Development Agency, Basti directing payment to Petitioner Suresh Chand an amount of Rs. 261/- as bonus. The Petitioners categorically made a statement in para 19 of the writ petition that in pursuance of the Circular/G.O. dated 15-10-90, Petitioners have been given bonus for the year 1989-90. In the counter affidavit, opposite parties have not given any reply to para 19 of the writ petition Earlier Paragraphs no. 17, 20 and 21 of the writ petition have been replied, specifically para 19 of the writ petition which clinches the matter have not been replied either in denial or admission. It appears that the Respondents have not replied to the averments of the para no. 19 and they conveniently omitted to give any reply to the said paragraph. Thus, the fact that Petitioners worked for year 1988-89 cannot be disputed by the Respondents in these circumstances. Thus, this is not one of those cases in which factual controversy is to be decided to ascertain whether the Petitioners worked for more than 240 days continuously in a year or not. It is crystal clear that the Petitioners had completed more than 240 days on daily wages prior to 1-2-90 when it was directed by the Director of Planning, District Rural Development Agency, Basti awarding payment of bonus for the year 1988-89 to them. There was no justification or any case for scoring of the names of the Petitioners from attendance register on 1-1-91. Admittedly, no notice or opportunity to the Petitioners was given by the Respondents before scoring of their names from the attendance register. The scoring of the names of daily wage worker from the attendance register itself amounts to retrenchment. Such striking of names of workmen from the rolls without following the procedure in section 25F amounts to termination of service, and such termination is retrenchment within the meaning of section 2(oo). Such order of termination cannot be allowed to stand in view of the decision H.D. Singh Vs. Reserve Bank of India and Others, .

8. The Petitioners have also pleaded and claimed a relief that directions for regularisation of their services be given in the pay scale of regular employees doing the same job as that of Petitioners. In the present writ petition. I have examined the facts and circumstances of the case closely and I am of the opinion that the striking of the names of the Petitioners from the rolls and stopping the

Petitioners to work with the Respondents without following the provisions of section 25F of the Central Act and section 6-N of the U.P. Act, amounts to illegal retrenchment.

9. The writ petition is, thus, allowed directing the Respondents to treat the Petitioners in continuous service and Respondents are directed to pay the same amount as paid to the Petitioners which was paid prior to I-I-90 for the entire period and continue to pay the same emoluments till they continue in service. It is further directed that since Petitioners have worked for more than 240 days continuously and earned bonus also, they deserves to be regularised on Class IV post. The opposite parties are directed to finally pass orders within two months from the date of presentation of a certified copy of the order before them, order regularising the petitioners' services as regular incumbent as Class IV employee and shall pay in future from the date of passing of the regularisation order, the emoluments payable to regular employees in Class IV cadre.

10. The writ petition is accordingly allowed with costs.