

(2013) 05 AHC CK 0146

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 25619 of 2011

Umesh Chandra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2013) 6 ALJ 444 : (2013) 138 FLR 591

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : W.H. Khan, J.H. Khan and Abhitab Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri W.H. Khan, the learned Senior Counsel assisted by Sri J.H. Khan, the learned Counsel for the petitioner and the learned Standing Counsel for the respondents. The admitted facts as culled out from the pleadings before the Labour Court is, that the petitioner, who is a workman was appointed as a part-time Tubewell Operator by an order dated 11th March, 1987 for a period of three years to work on Tubewell No. 1 NBG. The appointment letter clearly indicated that his services would come to an end on 14th March, 1990. When the term was coming to an end, the petitioner filed a writ petition No. 2725 of 1990 and obtained an interim order dated 21st March, 1990, whereby the Court allowed the petitioner to continue to work provided the Tubewells and the post were available. It is not known as to whether, the petitioner was permitted to work in terms of the interim order as the Court does not find any pleadings to that effect. On 20th March, 1992, the State Government issued a Government Order indicating that the nomenclature of the post of part-time Tubewell Operator would be changed to Assistant Tubewell Operator and that these Tubewell Operators would work for a period of three hours in a day and that the remaining time could be utilized by them for other work. It was also

indicated that, in the event, the tubewell failed or there was no requirement of work, the services of these Assistant Tubewell Operators would be dispensed with in terms of the State Government Order.

2. The petitioner was given an appointment letter on 14th May, 1992 for a period of three years. In this appointment letter, it was clearly indicated that his services was limited to three years as an Assistant Tubewell Operator and that he would be allowed to work only for three hours, and thereafter, it was open to the petitioner to do whatever kind of work. It was also indicated that, in the event, the tubewell failed or his services were no longer required, in which case, his services would be dispensed with.

3. It transpires that Tubewell No. 1, where the petitioner was working, failed and accordingly, the Executive Engineer issued a notice dated 23rd March, 1995 indicating that the services of the petitioner was no longer required as the Tubewell had failed, and therefore, his services would come to an end after 31st March, 1995.

4. Curiously, the petitioner did not challenge the order of termination, but chose to file a writ petition before the Lucknow Bench, being writ petition No. 3611 (ss) of 1995, for regularization of his services. This petition was eventually dismissed by a judgment dated 13th December, 2005 on the ground that the services of the petitioner could not be regularized under Article 226 of the Constitution of India, coupled with the fact that his services had already been terminated by a notice dated 23rd March, 1995, and even, if there was a violation of the provision of 6-N of the U.P. Industrial Disputes Act, the remedy against the order of termination lay under the Industrial Disputes Act. Pursuant to the dismissal of the writ petition, the petitioner raised an industrial dispute in the year 2006, which was ultimately referred by the State Government by an order dated 28th December, 2006.

5. Before the Labour Court, the workman contended that he had been working continuously in service since 1987 without any break and that he had completed 240 days in a calender year and that the termination of his services by the notice dated 23rd March, 1995 was in a gross violation of the provision of section 6-N of the U.P. Industrial Disputes Act. It was also contended that many Tubewell Operators were still working, where the Tubewell had failed and that the petitioner had been discriminated. It was also contended that the juniors to the petitioner were allowed to continue in violation of the provisions of section 6-P and section 6-Q of the Industrial Disputes Act. The workman, subsequently, prayed that the order of termination should be set aside and that he should be reinstated with continuity of service and with full backwages.

6. The employers contended that the petitioner was appointed initially as a part-time Tubewell Operator for a fixed period, and thereafter was issued a fresh appointment letter again for a fixed period of three years on certain terms and conditions. The appointment letter clearly indicated that, in the event, the

Tubewell failed, his services would be dispensed with. These terms and conditions were duly accepted by the workman, and therefore, it was no longer open to the workman to contend that such conditions imposed in the appointment letter was onerous. The employers also contended that the Irrigation Department was not an industry as specified u/s 2-(k) of the U.P. Industrial Disputes Act. It was also contended that the services of the workman was terminated on 31st March, 1995, whereas the dispute was raised in the year 2006 after a gap of more than 10 years and on account of undue delay no relief can be granted to the workman.

7. The Labour Court after, considering the material evidence that was brought on record, held that the Irrigation Department is an industry and that the petitioner is a workman as defined u/s 2(z) of the Act. The Labour Court held that there has been delay in raising the reference, but such delay cannot defeat the claim of the workman. The Labour Court further held that the provision of section 6-P and section 6-Q cannot be considered in the present case as the same was not referred by the State Government in the reference order. The Labour Court further found that the termination of the services of the workman was based on the terms and conditions on the appointment letter, which was accepted by the petitioner while taking up the job and that such termination based on the terms and conditions of the appointment letter did not amount to the retrenchment as defined u/s 2(s) of the U.P. Industrial Disputes Act. The Labour Court, accordingly, declined to grant any relief to the workman and rejected his claim application. The petitioner, being aggrieved by the said award, has filed the present writ petition.

8. Before this Court, the workman raised new pleas, namely, that by an order of 16th June, 1994, the petitioner was transferred to work in Tubewell No. 4 NGB. This fact has been stated in paragraph 7 of the writ petition, which has been categorically denied by the respondent in their counter-affidavit. Such grounds which are not a part of the record of the Labour Court cannot be taken into consideration in a writ jurisdiction.

9. The learned Counsel also relied upon a decision of the Lucknow Bench in the case of Suresh Chandra Tewari and others v. State of U.P., and others, decided on 18th May, 1994, in which the Government Order dated 20th February, 1992 was quashed and part-time Tubewell Operators were allow to continue. It was contended that the case of the petitioner stood on the same footing, and consequently, the petitioner should also be given the same relief. The learned Counsel also relied upon a decision in the case of Indra Kumar Singh v. State of U.P. and others, 2008 (26) LCD 280. in which, the order of termination, which was based on the conditions given in the Government Order dated 20th Feb, 1992 was quashed in a writ jurisdiction. The learned Counsel submitted that in view of this decision, which was fully applicable, the petitioner was entitled to be given the same relief.

10. The learned Senior Counsel contended that various Tubewell Operators filed

various writ petitions, where tubewells had failed, and all those writ petitions were allowed and these Tubewell Operators were reinstated in service. It was contended that the conditions mentioned in the appointment letter was based on the conditions given in the Government Order dated 20th February, 1992 which has been quashed in the case of Suresh Chandra (supra), and consequently, Such conditions, being onerous, could not be a factor for dispensing the services of the workman. It was therefore, contended that the petitioner should also be granted the same relief of reinstatement in service.

11. Having heard the learned Counsel for the petitioner, the Court is of the view that the decision in the case of Suresh Chandra and in the case of Indra Kumar Singh are based on its own facts. No doubt, the Government Order dated 20th February, 1992 was quashed in the case of Suresh Chandra (supra), on the ground that the nomenclature of part time Tubewell Operator cannot be changed to the Assistant part time Tubewell Operator. The conditions mentioned in the impugned order was not considered by the Court in Suresh Chandra's case. In Indra Kumar Singh's case, the Court found that the appointment of the petitioner did not contained such conditions as mentioned in the Government Order dated 20th February, 1992, and accordingly, quashed the order of the termination, which was based on the conditions mentioned in the Government Order dated 20th February, 1992. This decision is distinguishable.

12. The terms and conditions in the appointment letter, namely, that if the tubewell failed and that the services are no longer required, in which case, the services of the Tubewell Operator would be dispensed with has to be tested on the anvil of reasonableness. In the opinion of the Court, such conditions are neither onerous nor discriminatory, tubewells have a limited period of life and when a tubewell dries up, it becomes non-operational and, at that stage, it is for the authority to see as to whether the services of a Tubewell Operator is required or not? If their services are required, it would be open to the authority to extend their services, failing which, their services would be dispensed with.

13. In the case of Suresh Chandra (supra), the evidence that was led proved that part time Tubewell Operators were not working for a limited period of time, but were working beyond the stipulated period and were working at odd hours of the day. It came on record that on account of erratic electric supply, the Tubewell operator was required to operate Tubewell whenever the electricity was available. On account of these findings, the Court was of the view that the condition that the petitioners were working for a limited period was incorrect. In the instant case, no such evidence has been brought by the petitioner before the Labour Court to indicate that he was working full time or beyond the stipulated hours of working nor there is any such pleadings to this effect.

14. In the light of the aforesaid, the services of the workman was dispensed with in accordance with the terms and conditions of the appointment letter and would not attract the provisions of section 6-P and section 6-Q of the Industrial Disputes Act. The Labour Court, however, committed an error in holding that

since the reference order did not mention about section 6-P and section 6-Q, the Labour Court could not deal with such questions. In the opinion of the Court, the Labour Court committed an error. In order to test the validity and legality of the order of the termination, it would always be open to the Labour Court to deal with incidental questions attached to the main reference order and consider the violation of section 6-P and section 6-Q, and the consequential relief to be given, in the event, the Labour Court found that the order of termination was illegal. The Court finds that the Labour Court committed an error in holding that the provision of retrenchment as embodied in section 2(s) was not applicable as the services of the workman was terminated in terms of the appointment letter.

15. The Court is of the opinion that the Labour Court committed an error. The termination of the services of the workman for any reason whatsoever amounts to retrenchment unless the termination falls in the exceptional clause. Even if, the services of the workman has been terminated in terms of the appointment letter, the same does not fall in the exceptional clause. Admittedly, the workman had worked for more than 240 days in a calender year and had more or less completed three years of service. If his services was no longer required on account of the tubewell having failed, his services could be dispensed with after complying with the provisions of section 6-N of the Act. This has not been do so. Consequently, the order of termination of the services of the workman was violative of provision of section 6-N of the Industrial Disputes Act. The order of termination cannot be sustained.

16. Similar notice was given to Indra Kumar Singh, who challenged the notice in a writ jurisdiction without going through the process of the Labour Court. His writ petition was allowed on a different ground and he was reinstated in service. Similarly, a large number of part-time Tubewell had filed writ petitions who were also reinstated in service.

17. In the case of Suresh Chandra (supra), the Government Order of 1992 was quashed and the services of the workman remained untouched. Subsequently Regularization Rules was introduced in 1998, and based on those Rules, many of the services of the part-time Tubewell Operators have been regularized.

18. The petitioner in the instant case had also filed a writ petition for regularization of his services in the year 1995, but did not challenge the order of termination on account of which, his writ petition was dismissed. The petitioner, thereafter, raised an industrial dispute.

19. In view of the aforesaid, the Court is of the opinion that since similarly situated persons were reinstated in the service by various orders of the Writ Court for different reasons, the petitioner is also entitled to be reinstated in service. The Court has held that the order of termination was in violation of the provision section 6-N of the Act. The Court accordingly, holds that the award of the Labour Court declining to grant relief was wholly erroneous. The award is accordingly quashed. The petitioner would be reinstated in service.

20. The reference was made in the year 2006 after a gap of almost 11 years on account of the fact that the petitioner was pursuing his remedy for regularization of his services before a Writ Court. For this delay, the liability of backwages cannot be fastened upon the employers. The Court is, therefore, of the opinion that in order to mould the relief, the petitioner is only entitled for reinstatement with continuity of service, but will not be entitled for any backwages. In view of the aforesaid, the award of the Labour Court is quashed. The writ petition is allowed to the extent stated aforesaid.