

(1992) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4571 of 1986

Umesh Saxena

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 26-11-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 21, 25, 25F

Citation : (1993) 2 AWC 1208 : (1993) 1 UPLBEC 77

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Beni Prasad Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Bhat, J.—The petitioner is aggrieved against the award of Labour Court dated 19-10-83 and consequential order passed in pursuance of the said award, and has challenged the same in this writ petition. His services are said to have been terminated on 16-7-82. He raised a labour dispute which was rejected by the Labour Court.

2. The Petitioner's case is that he was appointed as Pump Attendant in the Water Works Department on 1-4-81 and he worked on the said post upto 30-6-81 on the pay scale approved by the Government. This appointment was ad hoc which was extended for a further period of six months by an order dated 17-6-81 which was communicated to the petitioner on 30-6-81. The services of the petitioner were further extended for three months. Then the petition thereafter received a letter dated 16-7-82 to the effect that his services were terminated. On this letter the petitioner raised a labour dispute. A reference was made to the Labour Court by the appropriate Government. The reference which was to be decided by the Labour Court was in respect of the termination order of the petitioner. The Labour Court issued the award and held the petitioner's termination from service justified.

3. The petitioner's case is that he has worked as Pump Attendant in the Water Works Department, Nagar Palika, Fatehpur Sikri continuously with effect from 4-1-81 to 16-7-82 i.e. for 469 days immediately preceding his termination of service" The services of the petitioner, therefore, could not be terminated in violation of the mandatory provisions of law. He was entitled to get retrenchment compensation and also one month's pay In lieu of one month notice which was required to be served upon him by the employer. The Labour Court has rejected the petitioner's claim on the ground that he was an ad hoc employee, therefore, his services is against the provisions of section 25-F of the Industrial Disputes Act. The Labour Court's finding to the effect (sic) the petitioner being temporary employee appointed for a temporary period is also assailed as being bad in law. On the aforesaid set of facts, the petitioner seeks a further direction that, the respondents be directed to treat him In service and pay him all dues.

4. Counter affidavit has been filed by the other side. The only defence put forth by the respondents to resist the claim of the petitioner is that the petitioner was an ad hoc employee whose employment was for a fixed period and there was no necessity to retain the petitioner and he ceased to be an employee w.e.f. 15-7-82 when the date of last extension of the ad hoc employment expired. Therefore, he is not entitled to any protection of provisions of Industrial Disputes Act.

5. In his rejoinder-affidavit, the petitioner has reiterated all that what is stated in the writ petition and he has submitted that the provisions of Industrial Disputes Act protect his rights and he cannot be thrown out without following the mandatory provisions of the Industrial Disputes Act.

6. Learned Counsel for the parties were heard and the material placed on the record critically examined. The following facts are established-

(1) That the petitioner was appointed originally as Pump Attendant on 1-4-81 on ad hoc basis.

(2) That the petitioner's ad hoc appointment was extended from time to time and he worked as Pump Attendant from 1-4-81 to 15-7-82. In this manner he has worked for 469 days continuously within one year preceding the order of termination of his services.

(3) His services have been terminated without following the mandatory provisions of Industrial Disputes Act.

7. The pivotal question that falls for consideration is whether on the aforesaid facts, it was necessary to follow the procedure laid down in the Industrial Disputes Act (hereinafter called as the Act).

8. Section 25-F of the Act would certainly apply to the Petitioner even If his appointment was ad hoc or temporary. The fact that he had worked for more than 240 days in a year immediately preceding the issuance of termination order would make it imperative for the employer to follow the procedure laid down

under the Act He was entitled to be given retrenchment compensation and one month's pay in lieu of notice before he could be terminated from the service. It is immaterial that he was a temporary or ad hoc employee. Provisions of the Industrial Disputes Act would apply to him in as much as his retrenchment could be made only after following certain conditions precedent as laid down in the Act.

9. Learned Counsel for the petitioner has referred to certain authorities in support of his contention. In *Krishna Kumar Dubey v. U.P. State Food and Essential Commodities Corporation and Anr.*, it is held by the Supreme Court that where the workman had worked for more than 240 days continuously preceding before his termination of services, the termination of his services is bad without complying with the provision of section 25F of the Act. Reinstatement of the employee was ordered because provision of the Act was not complied with. In *Shailendra Nath Shukla v. The Vice Chancellor Allahabad University* 1986 UP LB EC 667. Daily wage workers who had completed 240 working days within a period of 12 months immediately preceding the date of termination of their services without payment of retrenchment compensation and without following the procedure provided under law were terminated from the service. The Division Bench of this Court held that their termination was void and they were entitled to be reinstated and to be declared continuing in service with back wages.

10. In *State Bank of India v. Shri N. Sundara Money* AIR 1976 SC 1011, it was held that where the termination of service was for any reason whatsoever provision of section 25-F of the Act would be attracted. In *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, the Supreme Court has held that termination by employer of the services of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. Some cases are excluded from application of section 25-F of the Industrial Disputes Act because the statute excuses termination of services of workmen under certain conditions not to amount to retrenchment and those exceptions are given in section 25-F itself. If a case is not covered by the exception then every termination whatsoever be its ground, will be retrenchment and provision of section 25 of the Industrial Disputes Act is to be followed.

11. Provisions of section 25 of the Industrial Disputes Act were therefore, necessarily to be followed by the employer before issuance of the order dated 16-7-82. The petitioner was retrenched and his retrenchment was made without following the mandate contained in section 25-F of the Industrial Disputes Act. That being so, the retrenchment of the petitioner is void and cannot be supported in law.

12. The award of the Labour court dated 19-10-85 is not based on correct law. The Labour Court has rejected the claim of the petitioner only on the ground that he was a temporary/ad hoc employee. As stated earlier section 25-F is applicable to ad hoc-temporary employees also, if they have worked for more than 240 days in a year continuously immediately preceding the order of termination if

service. In this case it is admitted that the petitioner had worked continuously for 240 working days within a period of one year immediately preceding the order of termination. Therefore, the petitioner could be removed only after following the procedure established by law. u/s 2(oo) of the Act, the Petitioner's termination of service is retrenchment as it does not fall within any of the exceptions mentioned in that section. The labour Court has misinterpreted the law and not doubted the case in accordance with law. Therefore, there is error apparent on the face of the record of the labour court. The petitioner could be terminated from the service only after following the mandatory provisions of section 25-F of the Act. Those provisions have not been followed. Therefore this termination of service, which is retrenchment under law vitiates and is liable to be struck down.

13. Accordingly, this writ petition succeeds to the extent that the petitioner's retrenchment from the services dated 16-7-82 is held to be illegal and bad in law. The same is quashed. The award dated 19-10-85 upholding the illegal order of termination of petitioner's services is also illegal and is hereby quashed. A direction is given to the employer to engage the petitioner on the same terms and conditions on which he was engaged before termination of his services. The petitioner is entitled to be paid back wages also. In future, the petitioner shall be paid such wages as are admissible to the regular employees who are discharging the same or similar functions which were being discharged by the petitioner.

14. The writ petition is accordingly allowed.

15. There will be no order as to costs.