
(2001) 07 AHC CK 0151
In the Allahabad High Court
Case No : Second Appeal No. 1395 of 1981

Union of India

APPELLANT

Vs

Niwas Singh and Others

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 12, 14, 16, 311
Industrial Disputes Act, 1947 — Section 25F, 25G, 2A, 33C

Citation : (2001) 4 AWC 2874 : (2001) 91 FLR 558

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : Lalji Sinha, for the Appellant; V.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jain, J.—This is defendant's second appeal, which was admitted on ground No. 2, which is said to be the substantial question of law. The said ground is formulated below :

"Because the plaintiffs-respondents being governed by the provisions of the Industrial Disputes Act, then remedy was to raise an Industrial Dispute and the Civil Court has no jurisdiction to adjudicate the claim of the plaintiffs-respondents."

2. Thus, the dispute in this appeal is whether the suit is cognizable by the civil court or whether the Industrial Tribunal alone has jurisdiction to adjudicate upon the claim of the plaintiffs-respondents.

3. The brief facts giving rise to the present appeal are that the plaintiffs-respondents were appointed and employed by the defendant-appellant as class IV employees (the date of appointment is not disclosed). Their services were, however, terminated after expiry of 30 days' notice in the year 1967, although they had put in more than 6 months continuous service as casual labours and

temporary workmen and were selected for appointment in the grade of class IV. Their appointments as khalasis were made against posts duly sanctioned by the Railway Administration and those posts were not either abolished or retrenched. The sanction of the Railway Administration still exists. After appointment of the plaintiffs-respondents, many other persons were appointed some of whom are mentioned at the bottom of the plaint. Many persons who were appointed subsequently to the appointment of the plaintiffs are continuing in service, yet defendant Railway Administration terminated the services of the plaintiffs without following the principle of "last come first go". The order of termination is mala fide and unfair. The plaintiffs had a right to continue in service and to hold the posts, which is valuable right guaranteed under the Constitution of India. The order of the plaintiffs' dismissal is violative of the provisions of Articles 14 and 16 of the Constitution of India as also Article 311 of the Constitution of India. The plaintiffs have served the defendant for more than one year and prior to issue of notice for termination of service, the defendants have not paid any retrenchment compensation as required by Section 25F of the Industrial Dispute Act nor notice is served upon the appropriate Government in the prescribed manner. The order of termination is contrary to para 151 of the Indian Railways Establishment Code Vol. I as also to para 152 of the said Code. After termination of the services of the plaintiffs the Assistant Signal and Telecommunication Engineer and the District Signal and Telecommunication Engineer Lucknow and other Officers of the Signal Department have made recruitment of khalasis.

4. The defendant filed written statement denying the plaint allegations. It is stated that the notice u/s 80, C.P.C. is invalid and illegal. The plaintiffs were recruited as casual labours against work charge posts on dally wages and after completion of their six months continuous service they were granted authorized pay scale in the category of khalasi and no illegality has been committed in giving notice of termination as the plaintiffs were working against work charge establishment and the works on which they worked had been practically completed due to decrease in work-load, construction staffs were retrenched keeping in view the maxim "first come last go." Under the provisions of Industrial Disputes Act, 30 days' notice was given and the plaintiffs did not qualify themselves for being absorbed for the regular employment of class IV staff. The plaintiffs were given status of temporary employees for certain benefits after completion of 6 months continuous service. No employee junior to the plaintiffs in the cadre of khalasi has been retained in service. The services of the persons named at SI. Nos. 1, 2, 3, 7, 8 and 9 of the schedule attached to the plaint have been terminated on different dates.

5. On the pleadings of the parties, the trial court framed various issues. It held that the notice u/s 80, C.P.C. was invalid ; that the impugned order of termination violated the provisions of Sections 25F and 25G of the Industrial Disputes Act as well as Article 16 of the Constitution of India and it is also in contravention of the provisions of Sections 25F and 25G of the Industrial Disputes Act read with Article 16 of the Constitution of India.

6. The suit was, however, dismissed. First appeal preferred by the plaintiffs was also dismissed by the lower appellate court. Then second appeal was preferred in the High Court being Second Appeal No. 1273 of 1973 which was allowed by judgment and order dated 28.8.1979 and the case was remanded to the lower appellate court for decision of the appeal afresh in the light of the observations made in the body of the judgment. The lower appellate court allowed the appeal vide judgment and order dated 18.2.1981 and decreed the suit of the plaintiffs.

7. Aggrieved by the judgment and decree dated 18.2.1981, the defendant has preferred this second appeal.

8. Learned counsel for the parties have been heard at great length.

9. It is vehemently contended on behalf of the appellant that the dispute raised by the plaintiffs was an Industrial dispute as defined in Section 2A of the Industrial Disputes Act and such dispute could be resolved by Industrial Tribunal in view of the provisions contained in Section 25F of the Act. The suit was not maintainable. Learned counsel for the respondents has, however, submitted that the dispute raised is under general or common law even though it might be an industrial dispute also, the plaintiffs had both the forums, i.e., by filing the suit in the civil court or by approaching the industrial Tribunal.

10. The dispute related to termination of services of an individual workman and u/s 25F of the industrial Disputes Act it was certainly an industrial dispute. However, the contention is that there was violation of Articles 14 and 16 of the Constitution of India and, therefore, a suit could also be filed challenging the impugned order. Reliance is placed upon the two decisions of the Hon'ble Supreme Court - The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, and Sarwan Singh Lamba and others Vs. Union of India and others, Learned counsel for the appellant has placed reliance on observation of the Hon'ble Supreme Court made in paragraph 24 in Premier Automobile's case (supra).

11. In Premier Automobile's case (supra) in para 23 of the judgment, the Hon'ble Supreme Court laid down the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute which are as follows :

"To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus :

(1) if the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the civil court.

(2) if the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act; the jurisdiction of the civil court is alternative, leaving it to the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) if the industrial dispute relates to the enforcement of a right or an obligation

created under the Act, then the only remedy available to the suitor is to get adjudication under the Act.

(4) if the right, which is sought to be enforced, is right created under the Act such as Chapter VA, then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be."

12. Principle No. 2 specifically provided that if the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned. In the instant case, the respondents claimed that there was violation of Articles 14 and 16 of the Constitution of India as juniors to the plaintiffs-respondents were retained in service while the services of the plaintiffs who were seniors were terminated. Thus, there was violation of Articles 14 and 16 of the Constitution of India. Hence, the suit was maintainable.

13. In *Moti Lal Rajput v. State of U. P. and Ors.*, 1974 ALJ 840, it was held that "it is well-settled that even a temporary employee is entitled to the protection of Article 16 of the Constitution. Even when a temporary employee is removed from service. It must be shown that no discrimination has been practised against him in the sense that he has been asked to quit while his juniors are allowed to continue. If there is retrenchment on account of departmental exigencies, the authorities have to follow the rule of last come first go. They cannot pick and choose persons for retrenchment."

14. Another decision relied upon is *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, in this case, the Hon'ble Supreme Court held that "if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16. Conversely, if the services of a temporary Government servant are terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action."

That was a case in which services of a temporary Government servant were terminated without giving any reason while some other employees juniors to him were retained in service. It was held that the order of termination of service was passed arbitrarily and not on the ground of unsuitability or any other reason.

15. Another decision relied upon by the learned counsel for the respondents is a Division Bench of the Allahabad High Court (Lucknow Bench) rendered in A.K. Datta v. U. P. State Spinning Mills Co. Ltd. and Ors., 1990 (2), it was held in this case that "the plea raised by the petitioner that junior persons have been retained and the principle of "last come first go" has not been followed as one S.K. Mukherji was appointed subsequently and he has been retained in service is not without substance. No explanation to this effect has been given by the opposite parties. In these circumstances, the termination order is unsustainable being violative of Articles 14 and 16 of the Constitution of India as the employer is the "State" within the meaning of Article 12 of the Constitution of India."

16. Thus, the arguments advanced by the learned counsel for the respondents is well supported by various decisions of the Hon"ble Supreme Court as well as of the High Court.

17. In view of the discussion made above, this second appeal falls and is hereby dismissed.