

(2010) 04 UK CK 0004
In the Uttarakhand High Court
Case No : Writ Petition No. 195 of 2003

Union of India (UOI) and Another

APPELLANT

Vs

Makan Singh and Another

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2011) 129 FLR 158 : (2011) 3 LLJ 791 : (2011) 1 UC 703 : (2010) 1 UD 433

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Shri V.K. Kohli, the learned Senior Counsel duly assisted by Shri LP. Kohli, the learned Counsel for the Petitioners. Shri LP. Gairola, the learned Counsel for the Respondent No. 1 states that even though he has filed his vakalatnama on behalf of the workman, Shri P.C. Jinan, the learned Counsel would appear and argue the matter.

List has been revised. Shri P.C. Jhingan, the learned Counsel for the Respondent-workman is not present. This petition has been filed against the award of the Industrial Tribunal directing reinstatement of the workman with full backwages and all consequential benefits. The facts leading to the filing of the writ petition is, that the workman was working as a daily rated casual labour from 1985 and his services was dispensed with on 1st February, 1988. According to the Petitioners, one month's notice was given to the workman and that he was offered 15 days wages by way of retrenchment compensation which the workman refused to accept and, thereafter, the compensation was sent by money order which was also refused. Since the workman was aggrieved by the alleged dispensation of his services, he raised an industrial dispute which was eventually referred to the Tribunal for adjudication.

2. The workman contended that he had worked for more than 240 days in a calendar year and that he was entitled to be paid retrenchment compensation in

accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 which was not paid. The workman denied that he ever received one month's notice or retrenchment compensation u/s 25-F of the Act.

3. The Tribunal, after considering the matter, held that the workman had worked for more than 240 days in a calendar year and, therefore, was entitled for retrenchment compensation. The Tribunal further found that the employer could not prove that they had given one month's notice and also could not prove that the retrenchment compensation was paid to the workman. The Tribunal further found that in any case 15 days retrenchment compensation was insufficient as per the provision of Section 25-F, in as much as, the workman had worked for more than 1-1/2 years. In the light of the aforesaid findings, the Tribunal concluded that the action of the management in terminating the services of the workman was neither legal nor justified and, consequently directed the reinstatement of the workman with full backwages and all consequential benefits.

4. The Petitioner, being aggrieved, has filed the present writ petition. This Court finds that at the time when the writ petition was entertained, an interim order dated 06/05/1997 was passed staying the award in so far as it directed payment of backwages. As a consequence of this order, the workman must have been reinstated.

5. Having heard the learned Counsel for the Petitioner, the Court finds that the findings of the Labour Court with regard to the non-payment of the retrenchment compensation or giving one month's notice in lieu of wages is neither perverse nor is based on surmises and conjectures. Consequently, these findings, being finding of fact, cannot be interfered in a writ jurisdiction.

6. However, the Tribunal erred in law in directing payment of backwages to the workman. The Court finds that the award of the Labour Court directing payment of backwages is wholly unwarranted. Backwages cannot be granted as a matter of right merely because the Labour Court has directed reinstatement of the workman. Something more is required to be done by the Labour Court. The Supreme Court in the case of General Manager Haryana Roadways v. Rudhan Singh 2005 (106) FLR 607 (SC) : 2005 (34) AIC 370 (SC) , has held that the Labour Court should not order backwages mechanically and other factors, namely, adhoc appointment, length of service, i.e. whether it is short term, daily wages or temporary or permanent and whether the workman is in a position to get another employment coupled with the fact that during the intervening period, the workman was gainfully employed or not are the relevant factors for consideration of payment of backwages. In the present case, the Tribunal has nowhere discussed the fact that he was permanently employed or not or he was working on a substantive vacancy or that he was unemployed during the intervening period. However, from the averments brought on the record, one thing is clear, namely, that the workman was working as a daily rated casual labour. At this stage, the Court would have remitted the matter to the Tribunal to decide this aspect afresh but keeping in view of the fact that the services of the

Petitioner was dispensed with in the year 1988 and more than two decades have elapsed, it would not be worthwhile to remit the matter to the Labour Court at this stage. This Court finds that the workman was not represented before this Court and, consequently, it can be presumed that the workman must have fully satisfied with his reinstatement by the Petitioner. In the light of the aforesaid, the writ petition succeeds in part. The award of the Labour Court is modified to the extent that the workman would be entitled for reinstatement with continuity of service but would not be entitled for backwages.

In view of the aforesaid, the writ petition is partly allowed. The award of the Labour Court is modified to the above extent.