

(2004) 01 AHC CK 0003
In the Allahabad High Court
Case No : C.M.W.P. No. 48391 of 1999

U.P. Avas Evam Vikas Parishad and Another	APPELLANT
Vs	
Labour Court (2) and Another	RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Apprentices Act, 1961 — Section 2(2), 33
Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 25F, 6N

Citation : (2004) 2 AWC 1660

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Pankaj Mithal, for the Appellant; Arun Kumar Gupta and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition has been filed by U.P. Avas Evam Vikas Parishad challenging the award dated 9.4.1999 published in 5.7.1999 holding the termination of services of Respondent Rekha Gupta as illegal and reinstated her with full back wages and continuity of service.

3. The case of Respondent Rekha Gupta was that she was initially employed as apprentice under the Apprentice Act from 5.6.1989 to 4.6.1990 as a clerk-cum-typist. On completion of apprenticeship she was appointed on a salary of Rs. 682 per month on 5.6.1990. When she demanded for regular salary her services were terminated on 1.9.1992 without giving any charge sheet or complying with the provisions of Section 6N of the U.P. Industrial Disputes Act.

4. Admittedly she is a handicapped lady. The case of the Petitioner-Parishad is that the Parishad has framed rules for recruitment. The Respondent was appointed as a daily wager on need based work, hence her termination was not

retrenchment and compliance of Section 6N of the U.P. Industrial Disputes Act was not necessary.

5. The counsel for the Petitioner submits that the provisions of Section 25F of the Industrial Disputes Act or Section 6N of the Act are not attracted to a case of daily wager appointed irregularly without following rules. He places reliance on the case of Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors. : (1997) 4 SCC 560. The Labour Court by the impugned award has held that the termination of Rekha Gupta amounts to retrenchment and is void for non-compliance of Section 6N of the U.P. Industrial Disputes Act.

6. It is admitted fact that apprenticeship of the workman concerned ended on 4.6.1990. During this period she is not treated as workman according to Section 33 of the Apprenticeship Act but according to definition of workman in Section 2(2) of the Act even an apprentice is a workman. This definition has not been amended even after enactment of Apprentices Act. However, this question is not involved in this case inasmuch as admittedly the workman was employed from 5.6.1990 to 1.9.1992 and that she completed 240 days" continuous service in a year.

7. The contention of the counsel for the Petitioner that the workman was a daily wager is not correct. She was employed on monthly wages and her period of employment was not fixed for certain period. Her appointment letter has not been filed by the Petitioner with the writ petition. It has come in oral evidence of the workman that she was appointed to work as mate but as she could not perform the duties of mate she used to work as clerk-cum-typist which is a work of permanent nature. Thus, the theory of daily wager has been rightly disbelieved by the Labour Court. In para 6 of the writ petition the Petitioner states that she was a purely temporary employee. Even a temporary worker who completes 240 days" continuous working is entitled to the benefit of Section 6N of the Act and admitted that the Petitioner has not complied with the prior conditions of termination which amounts to retrenchment.

8. It is then urged by the counsel for the Petitioner that the Parishad has framed rules for recruitment and as these were not followed in appointment of Respondent-workman the termination is legal. This is not a case of regularisation in which validity of appointment is considered. This is a case of termination. Validity of appointment in the case of retrenchment has no relevancy if the termination is in violation of Section 6N of the Act. The reference in this case was regarding termination of services and not regularisation of services.

9. The counsel relied on the case of Himanshu Kumar (supra). The law laid down by the Hon"ble Supreme Court in the said case is not applicable to this case inasmuch as that case related to a daily wager. The Respondent of this case is not a daily wager but a temporary employee. The provisions of retrenchment do apply to a temporary employee also.

10. No other point has been raised by the counsel for the Petitioner. In the

circumstances of this case, there is no illegality or infirmity in the impugned award requiring interference by this Court under Article 226 of Constitution the and the writ petition deserves to be dismissed.

11. The writ petition is accordingly dismissed. No order as to costs.