
(2010) 04 UK CK 0006
In the Uttarakhand High Court

U.P. Cooperative Sugar Factories and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2011) 1 UC 700 : (2010) 1 UD 429

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Shri Tanveer Alam Khan, the learned Counsel for the petitioners and Shri Dinesh Gahatori, the learned Counsel for the respondent No. 3.

2. The petitioner has challenged the validity and legality of the award passed by the Labour Court directing reinstatement of the workman with continuity of service and with full backwages.

3. The facts leading to the filing of the writ petition is, that the workman was appointed on a temporary basis by an order dated 20th March, 1982. It is alleged that the workman after joining on 31st March, 1982 worked for only two days and then remained absent, as a result of which, the services of the workman was terminated. The workman represented and the management, taking a humanitarian approach, allowed the workman to join. It is alleged that the workman worked intermittently and, most of time, the workman remained absent without applying for leave. It is alleged that the petitioners? issued several notices and warning letters and that a show cause notice dated 03/12.09.1984 was issued and thereafter the order of termination dated 13/10/1984 was passed. The workman, being aggrieved by the order of the termination, raised an industrial dispute after two years which was initially declined by the authority but, on an appeal, the delay was condoned, and

eventually, the dispute was referred to the Labour Court for adjudication by an order dated 30th December, 1989.

4. Before the Labour Court, the workman contended that no domestic inquiry was initiated nor any retrenchment compensation was paid and, therefore, the order of termination was wholly illegal and that the workman was liable to be reinstated with continuity of service and with full backwages.

5. The Labour Court, in a cursory manner, without considering the facts raised by the petitioners held that the services of the workman had been terminated on account of certain misconduct and that no inquiry was initiated nor an opportunity of hearing was provided to the workman. The Labour Court further found that retrenchment compensation had not been paid and, therefore, held that the order of termination was illegal. The Labour Court accordingly directed reinstatement of the workman with continuity of service and full backwages. The petitioners, being aggrieved by the said award, has filed the present writ petition.

6. Shri T.A. Khan, the learned Counsel for the petitioner submitted that the conditions of service of the workman is governed by the Standing Orders relating to the workmen who were working in the Vacuum Pan Sugar Factory in which no notice is required to be given to a temporary workman and that the workman was appointed purely on a temporary basis as is clear from the appointment letter. The learned Counsel further submitted that as per the conditions of service indicated in the appointment letter, the services of the workman could be terminated at any time without giving any notice. The learned Counsel submitted that consequently, no domestic inquiry was required to be initiated nor an opportunity was required to be given to the workman. The Learned Counsel further submitted that from the facts raised by the petitioners in the written statement, which had not been controverted and which has not been discussed by the Labour Court, it is clear that the workman was a habitual absentee and was not interested in service. Further, certain documents have been filed by the petitioners during the course of the hearing of this petition which indicates that whenever a show cause notice was given, the workman begged forgiveness. The learned Counsel, accordingly, submitted that in the light of the admitted fact raised by the workman in his reply, it was clear that no sympathy was required to be given to direct reinstatement of the workman.

7. The learned Counsel for the petitioners placed reliance upon Clause L (3) of the Standing Orders which is extracted hereunder:

3. No notice will be necessary for termination of services, of temporary/casual workman at the end of the period for which he was engaged.

8. A perusal of the aforesaid provision indicates that no notice is required for terminating the services of a temporary workman at the end of the period in which he was engaged. Admittedly, a temporary workman is defined under Clause B (III) of the Standing Orders which is extracted hereunder:

B. (III) A 'temporary workman' is one who is engaged for work of a temporary or casual nature or to fill in a temporary need of extra hands on permanent, seasonal or temporary posts.

9. The appointment letter of the workman has been filed which indicates that the workman was appointed on a temporary basis on a substantive vacancy and that the post was to continue till such time as the State Government allowed the scheme to continue. In the light of the conditions mentioned in the appointment letter, it is clear that the workman was not appointed as a temporary workman as defined under Clause B (III) of the Standing Orders. The workman was not engaged as a temporary workman for work of a temporary or casual nature nor was he engaged to fill in a temporary need of extra hands on a permanent, seasonal or a temporary post. The appointment letter clearly indicates that the workman was appointed for an indefinite period on a substantive vacancy. The appointment order, no doubts, states that his appointment is temporary and his services could be terminated at any point of time. Once, the workman has worked for more than a year, the provision of Section 6-N of the U.P. Industrial Disputes Act automatically comes into play for the simple reason that the workman is also a workman as defined under Clause 2 (z) of the U.P. Industrial Disputes Act.

10. Admittedly, the workman was appointed on 20th March, 1982 and his services was terminated on 13th October, 1984. There is nothing to indicate in the written statement filed by the petitioners to the effect that the workman had never worked for more than 240 days in a calendar year. In the absence of such a statement, it can safely be presumed that the workman had worked for more than 240 days in a calendar year. Since the service of the workman was dispensed with without complying with the provision of Section 6-N of the Act nor a domestic inquiry was initiated nor an opportunity of hearing was provided to the workman, the Court finds that the order of termination was wholly illegal and without any authority of law.

11. Normally, when an order of termination is set aside, the natural corollary is reinstatement. The Labour Court has also granted backwages. In so far as backwages are concerned, the Court finds that backwages should not be automatically granted as a matter of right merely because the order of termination was illegal. In the present case, the order of termination was passed in the year 1984 and the dispute was referred by the workman himself in the year 1989. For this period, backwages cannot be granted and the petitioners could not be placed at fault for the delay in getting the matter referred to the Labour Court. Further, there is nothing to indicate that the workman remained unemployed during the intervening period. The Supreme Court in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, has held that the Labour Court should not order backwages mechanically and other factors, namely, the length of appointment, i.e. whether the appointment is a short term, adhoc or temporary appointment, are the relevant factors for consideration of payment of

backwages. The Supreme Court held that that the fact as to whether the workman is in a position to get another employment is also a factor to be considered while considering the grant of backwages. In the present case, the Court finds that none of these factors have been considered and that the Labour Court mechanically without any application of mind, has granted backwages which is wholly incorrect and unjustified.

12. Coming back to the question of reinstatement, the Court finds that the averments of the petitioners was not taken into consideration by the Labour Court. The petitioners categorically contended that pursuant to the order of appointment, the workman worked for two days and thereafter absented himself. The management, after issuing a show cause notice, terminated the services but, subsequently, on an application, the workman was asked to report for duty. Even thereafter, the workman worked intermittently and remained absent, for which, several show cause notices was issued. Some of the show cause notices have been mentioned in the written statement. It is alleged that every time a show cause notice was issued, the workman begged forgiveness and asked to be taken back in service. The written statement indicates that a humanitarian approach was taken by the management and the workman was taken back in service but taking advantage of this humanitarian approach, the workman misconducted himself and remained absent and eventually, no reply or show cause notice was given and his services was terminated. These facts have been vaguely denied by the workman. The written statement of the workman is conspicuous of these facts. This Court while considering the matter finds that the order of reinstatement should not be granted and the reasons for the Court's view is that at the time when the writ petition was entertained, the award was stayed subject to the deposit of Rs. 25000/-. The learned Counsel for the petitioners submitted that Rs. 25,000/- has been deposited before the Labour Court. The Court finds that the workman was a habitual absentee and from the date of his appointment has not been working to the satisfaction of the employers. The workman has remained absent and, admittedly, various show cause notices have been issued, some of which has been received by the workman. In one such reply, the workman has asked for forgiveness and had prayed for being taken back in service.

13. In the light of the aforesaid, this Court is of the opinion that reinstatement of the workman should not be fastened upon the employers at this stage, even though, admittedly, the order of termination was not passed in accordance with the provision of Law but, nonetheless, the Court is satisfied that this is one of those cases where reinstatement should not be ordered. In the light of the aforesaid, this Court is of the opinion that compensation of Rs. 25,000/- would be sufficient in lieu of reinstatement. Accordingly, the writ petition is partly allowed and the award of the Labour Court is modified to the aforesaid extent that even though the order of termination is illegal, the workman is not entitled for reinstatement or backwages and instead is entitled for Rs. 25,000/- alongwith interest that has accrued on it. The Court consequently directs the workman to

approach the Labour Court for the withdrawal of the amount that has been deposited by the petitioners. If such an application is filed, the Labour Court will release the amount in favour of the workman alongwith interest that has accrued, if any.