
(2010) 04 AHC CK 0316
In the Allahabad High Court
Case No : Writ. C. No. 23001 of 1995

U.P. Industrial Co-operative Association Ltd.	APPELLANT
Vs	
Presiding Officer and Another	RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Minimum Wages Act, 1948 — Section 26(2)

Citation : (2010) 126 FLR 451 : (2010) 3 LLJ 632

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present writ petition has been filed against the Labour Court Award passed in Adjudication Case No. 32/1995 dated March 4, 1995 whereby it has been held that the workman respondent No. 2 herein was illegally disengaged without giving him retrenchment compensation. The Labour Court has ordered the reinstatement of the respondent No. 2 with all full back wages and other consequential benefits.

2. The facts of the case lies in a narrow compass. The petitioner is an Apex Cooperative Society, registered under the U.P. Cooperative Societies Act, engages daily wagers and casual labourers to meet its temporary requirement of work load. It engages daily wagers in its various sales depots to meet the work pressure. The respondent No. 2 was engaged on October 1, 1985 on daily wages. In pursuance of the work order dated August 15, 1987 issued by the then Managing Director, he was again engaged vide order dated March 22, 1988 for 89 days on daily wage basis. His engagement came to an end w.e.f. September 12, 1987. The case of the petitioner is that the respondent No. 2 was never engaged thereafter. An industrial dispute was raised by respondent No. 2 after about 4 years. At the instance of respondent No. 2 the matter was referred by the state Government to the Labour Court for adjudication to determine as to whether the disengagement of the respondent No. 2 w.e.f. September 12, 1987

is legal, valid and justified and if not then to what relief he is entitled. The parties filed their respective written statements before the Labour Court. The evidence was led by them. The Labour Court in the impugned award came to the finding that the respondent No. 2 has worked from October 1, 1985 to September 12, 1987, without any break in service. It consequently found that since no retrenchment compensation was given to the respondent No. 2, the respondent No. 2, is entitled for reinstatement/re-engagement with all consequential benefits including back wages. Challenging the said award the present writ petition has been filed on behalf of the employer.

3. Sri V.K. Birla, learned Counsel for the petitioner submits that indisputably the respondent No. 2 was engaged on daily wage basis and, therefore, he does not come within the definition of workman as contained in the U.P. Industrial Disputes Act. Elaborating the argument, he submits that the engagement of daily wagger comes to an end automatically at the end of the day. The respondent No. 2, according to him, was engaged as and when his services were required by way of casual engagement. He further submits that the dispute was raised by the respondent No. 2 after a considerable period of time i.e. after about 4 years and as such the Labour Court committed illegality in entertaining and deciding the said dispute. In reply, the learned Counsel for the respondent submits that the plea of limitation sought to be urged herein was not pressed in service before the Labour Court and as such the said plea cannot be permitted to be raised for the first time in the present writ petition. Reliance has been placed upon a judgment of this Court in Mohd. Arshad v. Industrial Tribunal U.P. at Allahabad 2004 III CLR 824 (All.). In support of his submission, he contended that even a daily wagger is entitled for retrenchment compensation.

4. Considered the respective submissions of the learned Counsel for the parties. So far as the question of delay urged by the petitioner in the present writ petition is concerned, it appears that no such plea was raised before the Labour Court. There appears to be no averments even in the written statement filed by the petitioner to this effect. In any view of the matter the delay is not so enormous as to throw the petition on this ground alone. The learned Counsel for the respondent has rightly placed upon a judgment of this Court in the case of Mohd. Arshad v. Industrial Tribunal U.P. (supra), wherein the same contention raised by the employer was rejected in the writ petition. The other aspects of the case is as to whether the Labour Court was justified in ordering the reinstatement of the respondent workman who was admittedly a muster roll employee and was engaged on daily wage basis. The case of the petitioner was that the engagement of the respondent workman was not on any regular post. He was engaged as and when his services were required at its various sales depots. The engagement was only for the time being. The question arises whether such an employee is entitled to challenge his disengagement.

5. In Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, the Apex Court has held that when the appointments are regulated by the statutory;

rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the post in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees; working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of "retrenchment", therefore, cannot be stretched to such an extent as to cover these employees.

6. In *Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey*, it has been held that an appointment to the post of a temporary employee can be made where the work is essentially of temporary nature. In a case where there existed a vacancy, the same was required to be filled up by resorting to the procedures known to law i.e. upon fulfilling the constitutional requirements as also the provisions contained in the 1976 Regulations, governing the Corporation in question. With regard to the status of a daily wager/casual labourer/temporary employee it has been held that the daily wager does not hold a post as he is not appointed in terms of provisions of the Act and Rules framed thereunder and therefore he does not derive any legal right. In this very case, the Apex Court has relied upon its earlier judgment in the case of *M.P. Housing Board and Another Vs. Manoj Shrivastava*,

7. In *Executive Engineer, Construction Division, U.P. Jal Nigam, Allahabad v. Presiding Officer, Labour Court, Allahabad and Anr.* 2008 LIC 216 the Apex (sic Court) has held that it is settled law that where services of a daily wager/temporary or ad hoc employee are terminated without any stigma on the ground of non-availability of work or any such other ground, there is no requirement of offering opportunity of hearing or holding of domestic inquiry. In view of the above, the order of the Labour Court in so far as it relates to reengagement is concerned cannot be allowed to stand.

8. There is another aspect of the case as yet. The petitioner is a cooperative society. It is an apex cooperative society registered under the U.P. Cooperative Societies Act. The object of the society is to promote industrial cooperative movement in the State of U.P. in the section of Handloom and Textiles. The goods manufactured by the members are sold by the society through its various depots and by organizing the exhibitions etc. from time to time. The question whether such an employee of a cooperative society can invoke the provisions of U.P. Industrial Disputes Act or not. The matter is not *res integra* and has been examined on several occasions by the Apex Court.

9. In *Himanshu Kumar Vidyarthi and Ors. v. State of Bihar and Ors.* (supra), it was held that industrial laws do not apply to the employees whose service conditions are governed by statutory rules. So, U.P. Act does not apply to employees of the cooperative society. The notification dated June 30, 1988 issued under Sub-section (2) of Section 26 of the Minimum Wages Act, 1948 (in short "the Wages Act") makes the position clear that provisions of the aforesaid Act are not applicable to the service of workman employed under the societies

which are registered with the Registrar of Cooperative Societies.

10. It was indicated that the salaries and conveyance etc. paid by the registrar of the cooperative societies are also reviewed from time-to-time.

In R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others, the Apex Court has held that in view of the arbitration clause in the Uttar Pradesh Societies Act (in short "Societies Act") provisions of the Industrial Disputes Act are not applicable.

The aforesaid decision has been followed by the Apex Court in the case of Prabhu Dayal Vs. Sadhan Sahkari Samiti Mujuri Vikas Khand Paniyara and Others,

11. In view of the above discussion, the respondent No. 2 could not have invoked the jurisdiction of Labour Court under the U.P. Industrial Disputes Act.

12. In view of the above, the writ petition succeeds and is allowed, but no order as to costs.