

(2005) 05 AHC CK 0120
In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 23764, 23765 and 23863 of 1996

U.P. State Electricity Board and Executive Engineer, Electricity
Urban Distribution Division (I), U.P. State Electricity Board

APPELLANT

Vs

Mahendra Singh and Labour Court

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 12, 2, 25B, 6N, 8N

Citation : (2005) 4 AWC 3363 : (2006) 106 FLR 628 : (2005) 2 UPLBEC 1700

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Arvind Kumar, for the Appellant; Rakesh Pande and S.N. Dubey and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These three writ petitions have been filed by the U.P. State Electricity Board (now U.P. Power Corporation) challenging three awards of the labour court dated 20th December, 1995 directing for reinstatement of the respective respondents along with the payment of an amount of Rs. 8000/- towards back wages All the writ petitions raise common questions of law hence have been heard together and are being disposed of by this common judgment.

2. Heard Sri Arvind Kumar, learned counsel for the petitioners and Sri Rakesh Pandey appearing for the respondents.

3. Brief facts giving rise to writ petition No. 23863 of 1996 are :

4. The respondent No. 2 was engaged by the petitioner on muster roll basis in the year 1977-78 for work of distribution and to carry out renovation and extension to provide electricity to the consumers of Aligarh town. According to the petitioners the respondent Mahendra Singh was engaged on muster roll with effect from 6th July, 1977 and the services of all muster roll employees were dispensed from 1st February, 1979. An industrial dispute was raised by the

respondents in the year 1985 which was referred by the State Government to the labour court for decision vide reference order dated 27th July, 1987. The reference made to the labour court was as to whether the action of the employers to separate the workman Mahendra Singh from the work is valid or not and if not to what relief the workman is entitled. Before the labour court written statement was filed by the employers stating that the workman was never appointed in the service of the U.P. State Electricity Board. He was engaged only on muster roll basis to carry out the required work. The services of the muster roll employees were dispensed with from 1st February, 1979 and thereafter the workman never approached for reinstatement or to be taken back in service. A belated application was filed in the year 1985 before the Conciliation Officer. The workman filed his written statement claiming that he was engaged as muster roll employee in the month of December, 1977 and his services were abruptly terminated with effect from 1st July, 1979 without complying the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. The employers had prepared a list dated 7th January, 1980 showing the number of days worked by each workman including the respondents according to which the workman has worked for 361 days. The writ petition was filed by the employers reiterating that the workman was engaged on 6th July, 1977 and he worked only 356 days in calendar year 1977-1978. Junior Engineer Ved Ram Sharma also appeared before the labour court on behalf of the Employers whereas Mahendra Singh and Ashiq Ali appeared for the workmen. The labour court in its award dated 20.12.1995 held that concerned workman has worked more than 240 days in one year but the employers while terminating the services have not given notice and retrenchment compensation. The provisions of Section 6N of the U.P. Industrial Disputes Act, 1947 has not been complied hence the termination with effect from 1st February, 1979 is not valid. The workman was directed to be reinstated within thirty days and towards the back wages the lump sum amount of Rs. 8,000/- was directed to be paid. The writ petition has been filed challenging the said award.

5. The facts of writ petition No. 23864 of 1996 are almost similar. The workman claimed working as muster roll employee from January, 1978 and claims termination with effect from 1st February, 1979 in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. The workman further claimed that according to list dated 7th January, 1980 the workman is shown to have worked for 291 days. The case of the employers is that the workman was engaged only on muster roll basis and he has worked in the year 1977, 1978 and 1979 only for 291 days. Sri Ved Ram Sharma, Junior Engineer appeared for the Employers whereas for the workmen Mahendra Singh and Ashiq Ali appeared. The labour court held termination dated 1st of February, 1979 invalid having not complied with the provisions of Section 6N although the workman has worked for more than 240 days in one year.

6. The facts in writ petition No. 23865 of 1996 are identical except that the workman claimed to be engaged on muster roll basis from the month of

November, 1977 and the number of days claimed was 381 days. According to Employers 381 days was of the years 1977, 1978 and 1979.

7. The labour court declared the termination illegal having been affected without complying the provisions of Section 8-N of the U.P. Industrial Disputes Act, 1947.

8. In the record of all the three writ petitions the list orepared by the Employers showing the number of days of the working of the respondents workmen is on the record. Veer Pal Singh had worked for 291 days and Jhamman Lal had worked for 381 days. In the writ petition No. 23864 of 1996 the Employers themselves have filed details of working of the respondents from April 1977 till January, 1979 as Annexure-3 at page 24 of the writ petition. From the chart filed with Annexure-3 at page 24 of the writ petition the working of the respondent, Mahendra Singh is shown from 6th July, 1977 to 1st August, 1978 of each calendar month, working of the petitioner from July, 1977 to August, 1978 is following :-

July, 1977 19 days Aug. 1977 31 days Sept. 1977 29 days Oct. 1977 30 days
Nov. 1977 28 days Dec. 1977 26 days Jan. 1978 30 days Feb. 1978 24 days
March 1978 27 days April 1978 18 days May, 1978 26 days June, 1978 29 days
July, 1978 30 days Aug. 1978 09 days

9. Learned counsel for the petitioners challenging the award of the labour court has made following submissions :-

1. The workman respondent has not completed 240 days in preceding one calendar year hence was not entitled for protection of Section 6N of the U.P. Industrial Disputes Act, 1947.

2. The working number of days of each workman respondent claimed to have worked is spread over in the year 1977, 1978 and 1979 which days cannot be clubbed together for treating the services of the workman as continuous service for one year. The workman has not completed 240 days in any twelve calendar months beginning from 1st January hence he is not entitled for the benefit of Section 6-N of the U.P. Industrial Disputes Act, 1947.

10. Sri Rakesh Pandey learned counsel for the respondents refuting the submissions of the counsel for the petitioners contended that the workman has rightly been given benefit of Section 6-N of the U.P. Industrial Disputes Act, 1947 (hereinafter to be referred as the "Act") he having completed 240 days in twelve calendar months. Sri Pandey has submitted that the working of 240 days in twelve calendar months need not be in twelve calendar months preceding the date of termination but said working can be in any twelve calendar months. Learned counsel for the respondents supported the award of the labour court and submitted that all the writ petitions are liable to be dismissed. The counsel for the parties placed reliance on various judgments of the apex Court which shall be referred to while considering the respective submissions.

11. I have considered the submissions of both the parties and perused the record.

12. Before considering the submissions of the counsel for the parties it is relevant to note the provision of Section 2(g) of the Act defining "continuous service" which is being reproduced below :-

"2.(g) "continuous service" means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry."

13. Further Section 6-N of the Act provides for conditions precedent to retrenchment of the workman. Section 6N of the Act is quoted as below:-

"6. N. Conditions precedent to retrenchment of workmen,_____ No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Government."

14. The definition of Section 6N makes it clear that the provision contains an injunction against the Employers of not terminating the services of a workman who has been in continuous service for not less than one year without complying certain conditions. The key words in the Section are the words as under lined above. Thus the protection of Section 6-N is available to any workman who has been in continuous service for not less than one year. The definition of "continuous service" as noted in Section 2 (g) of the Act provides that a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry. The key words in the definition are during a period of twelve calendar months.

15. The question which has arisen for considering in the case is as to whether for getting the benefit of Section 6N of the Act working of 240 days has to be in the year preceding the date of termination or the benefit can be availed by a workman even if he has not completed 240 days working in the year preceding his termination but in any year earlier to the said year. The question further is as

to how the period of twelve calendar months shall be reckoned whether the period of twelve calendar months have to be taken beginning from 1st January of the year and ending 31st December of the year or the said calendar months may begin from any month in mid of a calendar year.

16. Taking the facts of the writ petition No. 23863 of 1996 it is clear that the workman was terminated on 1st of February, 1979 and in the year preceding the termination i. e. year counted from 1st February, 1979 back word i.e. till 31st January, 1978, the workman has worked only for 193 days, but taking into consideration the working of the workman from 6th July, 1977 i. e. the date of his engagement till 5th July, 1978 (one year from the engagement) total working days of the workman shall be 322 days. Thus taking one year period from the date of first engagement the workman has completed 240 days. The question as noted above is as to whether the working of 322 days reckoning from 6th July, 1977 to 5th July, 1978 entitles the workman protection of Section 6-N of the Act.

17. It is also relevant to note the provisions of the Industrial Disputes Act, 1947. Section 25-B defines "continuous service". The relevant portion of Section 25B is extracted below :--

"25B. Definition of continuous service.

For the purposes of this Chapter,

(1) a workman shall be said -to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer_____

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than_____

(i) one hundred and ninety days in the case of a workman employed below g round in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than_____

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

18. A plain reading of Section 25-B Sub-clause (2) (a) of the Act makes it clear that the workman shall be deemed to be in continuous service if he has worked 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made.

19. Section 25 B as amended by Act No. XXXVI of 1964 provides that the deeming of continuous service for a period of one year shall be done only when during period of twelve calendar months preceding the date with reference to which calculation is to be made the workman has worked. Thus the relevant period for entitlement of the benefit of Section 25-B is period of one year preceding the date of termination/retranchment.

20. The scheme of Section 25-B is different than the provisions of the U.P. Industrial Disputes Act, 1947. The provisions of the UP. Industrial Disputes Act, 1947 under Sections 6-N and 2 (g) came for consideration before the apex Court in U.P. Drugs and Pharmaceuticals Company Limited Vs. Ramanuj Yadav and Others, . In the above case the labour Court held that the workman was not entitled for protection of Section 6N since the workman had not completed 240 days in a calendar year preceding the date of termination/ retranchment. Against the award of the labour court writ petitions were filed by the workmen which writ petitions were allowed by the High Court holding that u/s 6N read with Section 2 (g) of the U.P. Industrial Disputes Act, 1947 it is not necessary for the workmen to complete 240 days in the preceding year and since the workmen had completed 240 days in the earlier calendar years preceding twelve calendar months from the date of retranchment they were in continuous service and their termination was illegal. The view taken by the High Court was affirmed by the apex Court, while considering the provisions of Sections 6N and 2 (g) of the Act apex Court also noted the provisions of Section 25B of the Industrial Disputes Act, 1947. Following was held by the apex Court in paragraph 11 of the judgment :-

".... The decision in the case of Mohan Lal Vs. Management of Bharat Electronics Ltd., does not lay down that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of Section 25-B. The question with which we are concerned was not under consideration in Mohan Lal case. If the view point propounded by the management is accepted, then every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance with Section 6-N of the U.P. Act, despite his having worked for a number-of years and for more than 240 days in each year except the last. Such an intention cannot be attributed to the U. P. Act. In the present case, as already noticed, the finding of the labour court is that the respondents worked for more than 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the labour court not to be violative of

Section 6-N. Reference may also be made to the decision in Ramakrishna Ramnath Vs. The Presiding Officer, Labour Court, Nagpur and Another, where this Court observed that the provision requiring an inquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of twelve calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in U.P. State Co-operative Land Development Bank Ltd. v. Taz Mulk Ansari and Ors., 1994 Supp. (2) SCC 745. relied upon by the learned counsel for the appellant has no applicability since that was a case of Clause (a) of Section 6-N and, therefore, Section 2 (g) had no relevance."

21. In the above judgment pronouncement of the apex Court clearly laid down that there is no requirement of completion of 240 days of the working in the year preceding the date of termination under the scheme of the U.P. Industrial Disputes Act, 1947 and if the workman has completed 240 days working even in earlier year he can claim the benefit of Section 6-N of the Act. The question still remains as to how the period of twelve calendar months shall be computed while determining the continuous service within the meaning of Section 12 (g). Section 2 (g) and Section 6-N uses the words "twelve calendar months" and "one year". The words "calendar months " has been defined in Black's Law Dictionary sixth Edition. "Calendar month" Period terminating with day succeeding month, numerically corresponding to day of its beginning, less one. It is also relevant to note the concept of "calendar year" which is also defined in Black's Law Dictionary sixth Edition in following words :-

"Calendar year" The period from January 1 to December 31 inclusive. Ordinarily calendar, year means 365 days except leap year, and is composed of twelve months varying in length"

22. A plain reading of Section 6-N indicates that the protection of Section 6-N is available to a workman who has been in continuous service for not less than one year under an employer. The provisions of Section 6-N is welfare statute which needs a border interpretation. The apex Court while considering the provisions of the U.P. Industrial Disputes Act, 1947 in the case of Surendra Kumar Vurma and Ors. v. Central Government Industrial Tribunal, New Delhi reported in 1981 (1) L. L. J. 386, had laid down the principle of interpretation for a welfare statute. Following observation was made by the apex Court in paragraph 6 :-

"6... Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions".

23. While determining the "continuous service of one year" the date of engagement of a workman is relevant. From the date of engagement of a

workman if a workman continues in service for one year, he is entitled for the benefit of Section 6-N of the Act. For workman the relevant date is thus date of his engagement. The period (of one year) used in Section 6-N cannot be construed as one calendar year beginning from 1st January and ending with 31st December. The word "one year" has been used to denote a period of time i. e. 365 solar days. If a workman is engaged on 1st July of an year he will complete one year in next 30th June. Thus one year period used in Section 6-N is a period of 365 days and not any calendar year. A reading of Sections 6-N and 2 (g) of the Act further reveals that the benefit accrues to a workman as soon as he completes one year's continuous service. As noted above, there is no requirement of proving working of 240 days in the year immediately preceding the termination. The benefit accrues to any workman who during the period of twelve calendar months has actually worked for not less than 240 days. The words "twelve calendar months" used in Section 2 (g) are not akin to a calendar year i. e. beginning from 1st January and ending on 31st December. Twelve calendar months can be taken any twelve calendar months e. g. twelve calendar months beginning from any day of any month of an year and ending in the next year. Thus the workman has not to prove working of 240 days in a calendar year i. e. from 1st January to 31st December, he will be entitled to the benefit of Section 6-N when he proves his working of 240 days in any twelve calendar months. The workman respondent Mahendra Singh of writ petition No. 23863 of 1996 has worked from 6th July, 1977 to 30th June, 1978 total 317 days which is not less than 240 days in twelve calendar months. Beginning twelve calendar months from 6th July, 1977 to 30th June, 1978 the working of Mahendra Singh is admittedly and from the record of the petitioners themselves is 317 days. Thus the workman in above writ petition is clearly entitled for the benefit of Section 6N. Although in the award by the labour court only conclusion has been recorded that the workman has worked 240 days in one year without noting the detailed facts and reasons but since the award can be supported from the materials on record no interference is called for in the award of the labour court dated 20th December, 1995 in writ petition No. 23863 of 1996.

24. Now coming to the writ petition No. 23864 of 1996 the workman Veer Pal Singh has claimed working of 291 days since January, 1978. According to the case of the employers themselves the workman was terminated on 1st February, 1979. The period of 291 days of working from January is substantiated from the list dated 7th January, 1980 prepared by the Executive Engineer which is on record as Annexure C.A.2. The working of the workman from January, 1978 to December, 1978 i. e. twelve calendar months if taken shall exceed working of 240 days even if working of 31 days i.e. Of entire January, 1979 is excluded. Excluding 31 days from 291 days there will be 260 days from January, 1978 to December, 1978 which is the working of twelve calendar months. The award in writ petition No. 23864 of 1996 can be fully supported from the materials on record; hence no interference is called for with the award dated 21st December, 1995 passed in adjudication case No. 158 of 1987.

25. Now coming to the last writ petition No. 23865 of 1996 the period of working of the workman from November, 1977 to 1st February, 1979 is 381 days. The working of 381 days of the workman Jhamman Lal is fully supported from the list dated 7th January, 1980 prepared by the Executive Engineer filed as Annexure C.A. 2. For determining the period of working of Jhamman Lal in twelve calendar months from November, 1977 the working after October, 1978 be excluded from total number of days to find out the actual period from twelve calendar months even if entire days of November, 1977 to December, 1978, January 1979 i.e. 92 days are deducted from the total number of working 381 days, the period of working of the workman from November, 1977 to October, 1978 comes to 289 days which is more than 240 days working in twelve calendar months. Thus the award dated 20th December, 1995 impugned in writ petition No. 23865 of 1996 can also be sustained on the materials on record.

26. In view of forgoing discussions no interference is called for in the findings of the labour court that the termination of workmen in each of the above writ petitions was in violation of provisions of Section 6-N of the UP. Industrial Disputes Act, 1947.

27. No other submission was made by the counsel for the petitioners for challenging the award.

28. All the writ petitions lacks merit and are accordingly dismissed. Parties shall bear their own costs.