

(2005) 05 AHC CK 0112

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21094 of 2002

U.P. State Road Transport Corporation

APPELLANT

Vs

Dinesh Kumar

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H, 6N
Uttar Pradesh State Road Transport Corporation Act, 1950 — Section 45

Citation : (2005) 6 AWC 5706 : (2006) 106 FLR 669 : (2005) 2 UPLBEC 1695

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Samir Sharma, for the Appellant; S.N. Dubey and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition under Article 226 of the Constitution of India is directed against the award dated 27th June, 2001, passed by the Presiding Officer, Labour Court, U.P., Faizabad in adjudication case No. 138 of 1996, copy whereof is annexed as Annexure-"4" to the writ petition.

2. The following dispute was referred to for adjudication to the labour Court :-

"Whether the action of the employer in terminating the services of its employee Dinesh Kumar (son of Sri R. Chandra) Chaukidar w.e.f. 01-03-1983 is justified? If no, to what relief the workman concerned is entitled?"

3. The case set up by the respondent-workman concerned in this writ petition was that the workman was appointed in temporary capacity as Chaukidar by the employer u/s 45 of the State Road Transport Corporation Act, 1950 at Kotila Bus Station by depot manager, Azamgarh vide its order dated 10th December, 1982 and the workman concerned joined the post on 10th December, 1982. The services of the workman concerned were terminated with effect from 1st March,

1983. The further case set up by the workman concerned was that after the appointment of the workman concerned, Harendra Singh, Vinod Kumar Prajapati, Yogendra Singh, Ghanshyam Singh and Abdul Rahman were appointed on 15th December, 1982; 1st January, 1983 and 5th January, 1983, respectively. The services of the workmen who were appointed subsequent to the workman concerned, have also been terminated by the order dated 28th February, 1983. The workman further stated that the employer have re-appointed the aforesaid workmen, referred to above, who were appointed subsequent to the appointment of the workman concerned and were terminated along with the workman, but the concerned workman has not been given appointment, therefore the employer have violated the provisions of Section 6-P and 6-Q of the U.P. Industrial Disputes Act, 1947, here-in-after referred to as "the Act". In these circumstances, the termination of services of the workman concerned was illegal and the workman is entitled for re-instatement with continuity of service and full back wages.

4. The petitioner-employer have taken up the case before the labour Court that the workman concerned was appointed on purely temporary basis, therefore termination of his services cannot be called in question. Both the workman and the employer have adduced their evidence and after considering the pleadings of the respective parties and the evidence on record the labour Court has arrived at the conclusion that the workmen, referred to above, who were appointed subsequent to the workman concerned and whose services were terminated along with the concerned workman have subsequently been appointed, but the concerned workman has not been appointed. This action of the employer is contrary to the provisions of Section 6-P and 6-Q of the Act. The petitioner-employer have taken the stand that the workmen, referred to above, were appointed in different capacity, whereas the concerned workman was appointed as Chaukidar and it is admitted case that the employers have not appointed any Chaukidar, therefore the provisions of Section 6-P and 6-Q of the Act, as submitted by the concerned workman, are not attracted, therefore the workman concerned is not entitled for any relief. The labour Court has categorically recorded a finding that those workman, referred to above, were appointed subsequent to the workman concerned, therefore in not appointing the concerned workman, the employer have violated the provisions of Section 6-P and 6-Q of the Act. The labour Court on the question of relief have found that the termination of the services of the concerned workman with effect from 1st March, 1983 being illegal, the workman concerned is entitled for re-instatement and on the question of back wages with continuity of service, the labour Court has arrived at the conclusion that since the concerned workman has raised the dispute after about 8-9 years, therefore the workman concerned would not be entitled for any back wages from the date of termination till 31st December, 1992 when the adjudication started before the labour Court.

5. Before this Court, learned counsel for the petitioner-employer submitted that since the workman has worked only for 80 days, therefore he is not covered by

the definition of "retrenchment" as given u/s 6-N of the Act, therefore the termination order cannot be said to be illegal. On the question of violation of Section 6-P and 6-Q of the Act, the case of the petitioner-employer is that since workman, referred to above, were not in the same category as none of them were working as Chaukidar, therefore it cannot be said that the employer have violated the provisions of Section 6-P and 6-Q of the Act. It is further submitted by learned counsel for the petitioner-employer that these workman, referred to above, were appointed in view of the compromise arrived at between the parties in an adjudication case and for this reason also the provisions of Section 6-P and 6-Q of the Act are not attracted.

6. Learned counsel appearing on behalf of the petitioner-employer relied upon a decisions of the apex Court reported in AIR 1980 Supreme Court, 1454 Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. v. The Management of Jorehaut Tea Co. Ltd.; and The Cawnpore Tannery Ltd., Kanpur Vs. S. Guha and Others, In rebuttal, learned counsel appearing on behalf of the concerned workman submitted that in view of the decision of the apex Court reported in AIR 1999 Supreme Court, 1056 Samishta Dube v. City Board, Etawah and Anr., it cannot be disputed that the concerned workman will be covered by the definition of the "workman" as defined u/s 2 (z) of the Act. On the question of violation of Section 6-P and 6-Q of the Act, in the case of Samishta Dube (supra), the apex Court has held, which reads thus :-

"7. We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in the establishment,--in the absence of any agreement between the employer and the workmen in this behalf--the employer shall ordinarily retrench the workmen who was the last person to be employed n that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6(N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh v. Presiding Officer, 1986 SCC 679 in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India Vs. S. Satyam and others,

7. In view of the aforesaid decision of the apex Court, the finding recorded by the labour Court that the petitioner-employer have violated the provisions of Section 6-P and 6-Q of the Act are up-held.

8. On the question of grant of relief, learned counsel for the concerned workman has relied upon decisions reported in (1997) 1 U.P.L.B.E.C., 329 (SC) Central

Bank of India v. S. Satyam and Ors.; and Oriental Bank of Commerce Vs. Union of India (UOI) and Others, Learned counsel for the concerned workman has relied upon paragraphs 9 and 12 of the case of Central Bank of India (supra, which read thus :-

"9. The plain language of Section 25H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 2(oo). Section 25F also uses the word "retrenchment" but qualifies it by use of the further words "workman...who has been in continuous service for not less than one year". Thus, Section 25F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman...who has been in continuous service for not less than one year". It is clear that Section 25F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service of less than one year, and it does not restrict or curtail the meaning of retrenchment merely because the provision therein does not apply for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchment while Section 25F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25G prescribes the principle of retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25F.

12. The other submission of Shri Rai, however, merits acceptance. All the retrenched workmen involved in the present case were employed for short periods between 1974 to 1976. It was only in 1982 that a writ petition was filed by them to claim this benefit. The other persons employed in the industry during the intervening period of several years have not been impleaded. Third party interests have arisen during the interregnum. These third parties are also workmen employed in the industry during the intervening period of several years. Grant of relief to the writ petitioners (respondents herein) may result in displacement of those other workmen who have not been impleaded in these proceedings if the respondents have any claim for re-employment. The laches leading to the long delay after which the writ petition was filed in 1982 is sufficient to disentitle them to the grant of any relief in the writ petition. Moreover, there is not even a suggestion made or any material produced to show that on the construction we have made of Section 25H the respondents would be entitled to get any relief in the highly belated writ petition after the lapse of several years by way of preference over any person employed during the intervening period. In our opinion, this alone was sufficient for the High Court to decline any relief to them. It was urged by learned counsel for the respondents that only a limited relief has been granted to the respondents which need not be disturbed. In our opinion, the lapse of a long period of several years prior to the filing of the writ petition is sufficient to decline any relief to the respondents."

9. Learned counsel for the petitioner-employer have also relied upon the observations in para 12 of the decision in the case of Oriental Bank of Commerce (supra) and contended that the direction for back wages in the award impugned in the present writ petition deserves to be quashed, which runs as under :-

"12. There is no averment in the writ petition as to in what manner the posts on which the respondent- workman had worked were filled. The policy adopted does not contain a complete prohibition that the recruitment to such post could be made through the banking Service Recruitment Board and not otherwise. In the circumstances, after this long period of 15 years it will neither be proper nor just nor in the ends of justice to relegate the concerned workmen to any test conducted by the Banking Service Recruitment Board to judge their suitability for the post. In my opinion, the facts of the present case are distinguishable from the facts of the case before Hon"ble the Supreme Court reported in judgment Today 1996 (1) SC 329. In case before Hon"ble Supreme Court there were Rules providing procedure for recruitment against which appointment could not be made. Thus, the Tribunal was perfectly justified in giving relief of reinstatement to the respondent-workmen and the award does not suffer from any error of law."

10. In view of the law laid down by the apex Court, referred to above, the direction for re-instatement cannot be said to be in any way suffers from any error of law, so as to warrant any interference by this Court in exercise of power under Article 226 of the Constitution of India.

11. In view of what has been stated above, this writ petition has no force and is accordingly dismissed. The interim order, if any, stands vacated. However, there will be no order as to costs.