

(2014) 03 UK CK 0078

In the Uttarakhand High Court

Case No : W.P. Nos. 352 to 355, 380, 381, 383, 384, 386, 387, 390 to 392, 394, 397 to 400, 402 to 406, 408 to 412, 501 to 515, 599 to 614/2014 (M/S)

Uttarakhand Forest Corporation

APPELLANT

Vs

Dharam Pal Singh

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2014) LLR 823

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Rakesh Thapliyal and Virendra Kaparwan, Advocate for the Appellant; M.S. Negi, Jitendra Chaudhary, Prabhakar Joshi, Amar Shukla and V.S. Rawat, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Alok Singh, J.—All these writ petitions are inter connected, therefore, with the consent of learned counsel for the parties, are taken up together for hearing and are being disposed of by this common judgment. Petitioners alongwith others were engaged by the U.P. Forest Corporation before creation of the State of Uttarakhand as daily wagers, commonly known as scalars/chowkidars. All the workmen including the respondents, herein, were retrenched by orders dated 30.5.1995 and 31.5.1995 after giving one month's wage in lieu of notice and retrenchment compensation in compliance of Section 6N of the U.P. Industrial Disputes Act. It is important to mention herein that one month's wage in lieu of notices and retrenchment compensation were received by all the workmen including respondents herein. Some of the workmen raised industrial dispute before the learned, Labour Court, while respondents/workmen, herein, did not raise any dispute.

2. Learned Labour Court in Award dated 24.12.1997 dismissed the claims of the

workmen having held that Section 25N is not applicable. It was further held that Forest Corporation does not fall within the definition of "industry". Feeling aggrieved, workmen preferred different writ petitions before Allahabad High Court. After creation of the State of Uttarakhand, all the writ petitions stood transferred to this High Court. This Court, vide judgment dated 21.8.2003, allowed the writ petitions filed by the workmen. This Court, in the judgment dated 21.8.2003, held that Forest Corporation is an "industry", therefore, Section 25N of the Industrial Disputes Act had full application, consequently, non-compliance of Section 25N of the Act was fatal for the employer/petitioners, herein. This Court vide judgment dated 21.8.2003 directed reinstatement of the petitioners/workmen therein with full back-wages.

3. Respondents in the present writ petitions initially did not make any attempt either to approach this Court or to approach Labour Court by raising the industrial dispute. However, after the judgment dated 21.8.2003 passed by the Coordinate Bench of this Court in writ petitions filed by other co-workmen, present respondents/workmen preferred several writ petitions before this High Court seeking the same relief, which was granted to the workmen/petitioners vide judgment dated 21.8.2003 claiming themselves to be similarly situated workmen. This Court allowed the writ petitions filed by the present respondents.

4. Uttaranchal Forest Development Corporation, feeling aggrieved from the judgment and order passed by this Court dated 21.8.2003 as well as the subsequent judgments and orders passed in several writ petitions filed by the present respondents/workmen, herein, approached Hon"ble Apex Court challenging the judgment and order dated 21.8.2003 as well as the subsequent judgments and orders following the judgment dated 21.8.2003. Ultimately, all the civil appeals arising out of the judgment dated 21.8.2003 and the subsequent judgment following the judgment dated 21.8.2003 were decided by the Hon"ble Apex Court vide judgment dated 12.12.2006. Judgment so rendered by the Hon"ble Apex Court dated 12.12.2006 is reported in Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, titled as Uttaranchal Forest Development Corpn. and another v. Jabar Singh and others.

5. Hon"ble Apex Court, in judgment dated 12.12.2006, was pleased to confirm the judgment dated 21.8.2003, however, in the appeals arising out of writ petitions filed by the present respondents/workmen, held that writ petitions filed by the present respondents/workmen were not maintainable and High Court ought to have not entertained all the writ petitions on the ground of laches and inordinate delay, and was further pleased to hold that workmen/present respondents could have approached the Labour Court by raising the dispute under Industrial Disputes Act. Undisputedly, thereafter present respondents/workmen raised industrial dispute before the Labour Court and the learned Labour Court, vide impugned Award dated 31.7.2013, directed reinstatement of all the workmen/respondents, herein, with stipulation that workmen/respondents, herein, who, had approached Labour Court between the year

2003-05 i.e. prior to the judgment of Hon"ble Apex Court dated 12.12.2006, were entitled for reinstatement with full back-wages and those workmen who had raised the dispute in the year 2007 were entitled for reinstatement with 50 per cent back-wages and those who had approached the Labour Court upto 2009 were entitled for reinstatement with 25 per cent back-wages, however, learned Labour Court was pleased to dismiss the claim/references of the workmen who had raised the disputes in the year 2011 and subsequent thereto. Feeling aggrieved, Forest Corporation has filed the present writ petitions challenging the impugned Award.

6. I have heard Mr. Rakesh Thapliyal, Advocate with Mr. Virendra Kaparwan, Advocate for the petitioner Corporation and Mr. N.S. Negi, Mr. Jitendra Chaudhary, Mr. Prabhakar Joshi, Mr. Amar Shukla, and Mr. V.S. Rawat, Advocates for the respondents/workmen, and have carefully perused the record.

7. Mr. Rakesh Thapliyal, learned counsel appearing for the employer/Forest Corporation/petitioners, herein, vehemently contends that although there is no limitation prescribed for raising the industrial dispute, however, since the Labour Court was approached with inordinate delay, therefore, Labour Court instead of passing the impugned order of reinstatement with full back-wages, 50 per cent back-wages and 25 per cent back-wages, as the case may be, should have awarded the compensation in lieu of reinstatement and wages. In support of his argument,- Mr. Rakesh Thapliyal, learned counsel appearing for the petitioner Corporation, has placed reliance on the judgment passed by Hon"ble Apex Court in the cases of Uttaranchal Forest Development Corporation Vs. M.C. Joshi, and the Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal,

8. On the other hand, learned counsel appearing for the workmen/respondents, herein, vehemently argued that since almost 200 workmen were retrenched by a common order, therefore, no discrimination should be made between the same class of workmen in view of the fact that Hon"ble Apex Court in the case of Jabar Singh (supra) was pleased to uphold the judgment passed by the learned Single Judge of this Court dated 21.8.2003, whereby reinstatement was directed with full back-wages. It is further argued by the learned counsel for the workmen/respondents, herein, that since delay is no ground to refuse to entertain industrial dispute before the Labour Court, therefore, Labour Court should not have adopted different scales for payment of back-wages, as was done by the Labour Court in the present case, by making three different classifications of similarly situated/same set of workmen and Labour Court ought to have followed the judgment passed by this Court dated 21.8.2013, which was approved by the Hon"ble Apex Court in the case of Jabar Singh (supra).

9. I have given my serious thought to the rival contentions raised by the learned counsel appearing for the parties. In my considered opinion, retrenchment order was passed way-back in the year 1995 and few of the workmen approached the Labour Court soon thereafter and were directed to be reinstated by this Court

vide order dated 21.8.2003. After the judgment dated 21.8.2003, present respondents/workmen preferred writ petitions before this Court, which were initially allowed by this Court following the judgment dated 21.8.2003. However, judgments rendered by this Court were set aside by the Hon''ble Apex Court in the case of Jabar Singh (supra). The fact remains that workmen who initially approached the Labour Court and got the order of reinstatement vide judgment dated 21.8.2003 -passed by this Court is a different class. However, the workmen/respondents, herein, who were initially sleeping over their right without their being any sufficient cause and, for the first time, filed writ petitions after the judgment rendered by this Court dated 21.8.2003, therefore, they can be classified as a different class from the class of the workmen who initially approached the Labour Court.

10. Hon''ble Apex Court in the case of M.C. Joshi (supra), having placed reliance in the earlier judgments passed by Hon''ble Apex Court in the cases of Employers in relation to the Management of Sudamdih Colliery of Bharat Coking Coal Ltd. Vs. Their workmen represented by Rashtriya Colliery Mazdoor Sangh, Haryana State Electronics Development Corporation Ltd. Vs. Mamni, ; North Eastern Karnataka R.T. Corpn. Vs. Ashappa, and U.P. State Road Transport Corporation Vs. Man Singh, was pleased to hold that if workman had approached the Labour Court after six years from his retrenchment then in lieu of reinstatement and back-wages, a compensation should be awarded, which was assessed to be Rs. 75,000. Likewise, in the case of Mohan Lal (supra), Hon''ble Apex Court while placing reliance on the previous several judgments of the Apex Court assessed the compensation to be Rs. 1,00,000 in lieu of reinstatement and back-wages in view of the fact that workman had raised the industrial dispute after six years of termination.

11. This is settled position of law that while deciding the industrial dispute, reinstatement is not automatic and this Court is duty bound to see peculiar facts and circumstances of the case as to whether a reinstatement order should be passed or in lieu of reinstatement and back-wages, compensation should be awarded.

12. Since all the respondents/workmen were retrenched in the year 1995 before the bifurcation of the State of Uttar Pradesh and after creation of the State of Uttarakhand in 2000, Uttarakhand Forest Development Corporation came into existence, therefore, reinstatement with back-wages would amount to hardship to the Uttarakhand Forest Development Corporation, which was not in picture at the time of retrenchment of the present respondents. Moreover, nothing was placed on the record by the respondent/workmen, herein, before the learned Labour Court to the effect that workmen were not gainfully engaged anywhere in the intervening period. Therefore, in my considered opinion, a compensation would be best remedy in lieu of reinstatement and back-wages.

13. There is another aspect of the case i.e. initially it was held that Forest Corporation was not an industry, therefore, Section 25N had no application,

however, this Court in a judgment dated 21.8.2003 held that Corporation is an industry and Section 25N has full application. Moreover, all the respondents/workmen initially accepted one month wages in lieu of the notice, therefore, finding fault with the retrenchment on the technical ground of application of 25N does not mean automatic reinstatement. In my considered view, instead of reinstatement, a suitable compensation should be awarded to the workmen/respondents, herein.

14. Considering the peculiar facts and circumstances of the case, i direct that Forest Development Corporation/petitioner, herein, shall pay Rs. 1,50,000 to each and every respondent/workmen, herein, as compensation in lieu of their reinstatement and back-wages. Compensation shall be paid within four weeks from today positively, failing which Corporation/petitioner shall also pay interest at the rate of 10 per cent per annum from the date of Award passed by the learned Labour Court till actual payment is made in favour of the respondents/workmen. Impugned Award passed by the learned Labour

Court stands modified to that extent.

No order as to costs.

CLMA Nos. 1351 of 2014, 1352 of 2014, 1353 of 2014, 1354 of 2014, 1569 of 2014, 1570 of 2014, 1571 of 2014, 1572 of 2014, 1573 of 2014, 1574 of 2014, 1575 of 2014, 1576 of 2014, 1577 of 2014, 1578 of 2014, 1579 of 2014, 1580 of 2014, 1581 of 2014, 1582 of 2014, 1583 of 2014, 1584 of 2014, 1604 of 2014, 1605 of 2014, 1606 of 2014, 1607 of 2014, 1608 of 2014, 1609 of 2014, 1610 of 2014, 1611 of 2014, 1612 of 2014, 1613 of 2014, 1614 of 2014, 1615 of 2014, 1616 of 2014, 1624 of 2014, 1625 of 2014, 1905 of 2014, 1906 of 2014, 1907 of 2014, 1908 of 2014, 1909 of 2014, 1910 of 2014, 1911 of 2014, 1912 of 2014, 1913 of 2014, 1914 of 2014, 1915 of 2014, 1916 of 2014, 1917 of 2014, 1918 of 2014, 1919 of 2014, 2458 of 2014, 2459 of 2014, 2460 of 2014, 2461 of 2014, 2462 of 2014, 2463 of 2014, 2464 of 2014, 2465 of 2014, 2466 of 2014, 2467 of 2014, 2468 of 2014, 2469 of 2014, 2470 of 2014, 2471 of 2014, 2474 of 2014 and 2475 of 2014 also stand disposed of accordingly.

Let a copy of this judgment be kept in all the connected writ petitions.