
(1996) 05 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 14 of 1989

Vikramaditya Pandey

APPELLANT

Vs

Industrial Tribunal II and Another

RESPONDENT

Date of Decision : 09-05-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2

Citation : (1997) 75 FLR 844 : (1998) 3 LLJ 349 : (1997) 1 UPLBEC 517

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : S.N. Tripathi and K.P. Agrawal, for the Appellant; Standing Counsel and Rakesh Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner's case, inter alia, was that the petitioner was appointed on ad-hoc/temporary basis from time to time with the Respondent No. 2. His service was terminated with effect from July 19, 1985. No written termination order was felt necessary since his service was ad-hoc temporary. The termination was not the result of any punishment on account of misconduct. Therefore, the termination being termination simpliciter, amounts to retrenchment within meaning of Section 2 (s) of the U.P. Industrial Disputes Act (hereinafter referred to as the U.P. Act). Inasmuch as the petitioner was in continuous employment within the meaning of Section 2(g) of the U.P. Act and, as such, is entitled to retrenchment compensation and one month's notice pay in lieu thereof. Neither any notice nor any notice pay in lieu thereof nor any retrenchment compensation was paid to the petitioner. Therefore, the termination was violative of Section 6-N of the U.P. Act read with Section 25F of the Industrial Disputes Act (hereinafter referred to as the Central Act). Out of the said termination, a dispute was raised by the petitioner. Upon reference being made, Adjudication Case No. 28 of 1987 was registered before the Industrial Tribunal (II) U.P. Lucknow. The petitioner filed his claim by means of a written

statement submitted in the said case, which is Annexure-2 to the writ petition. The Respondent No. 2 had also filed its written statement, which is Annexure-3 to the writ petition. Rejoinder statement of the petitioner is filed as Annexure-4 to the writ petition. In the course of proceeding witnesses were examined. By an award dated October 18, 1987 the said Adjudication Case No. 28 of 1987 was disposed of. The said award is annexure-7 to the writ petition. In the said award though the Tribunal had found that the petitioner was in continuous service within the meaning of Section 2(g) of U.P. Act and that the termination amounts to retrenchment, but the Tribunal refused to pass an order for reinstatement with back wages. On the other hand it had directed payment of compensation assessed for years of service alongwith the notice pay as due on July 19, 1985 together with interest payable thereon calculated at the rate of 12% per annum till the date of payment. It is this award dated October 18, 1988 passed in Adjudication Case No. 28 of 1987, has been impugned by the petitioner, by means of present writ petition.

2. The Respondent No. 2 on the other hand has made out a case in the Counter affidavit that the petitioner was appointed on ad-hoc basis from time to time on the basis of his applications for limited period specified in each contract of employment. On the expiry of each such appointment the petitioner has to make fresh application for fresh appointment and each time fresh ad-hoc appointment of limited duration was given. Since the period of appointment was limited, therefore, such appointment stood automatically terminated in terms of stipulation contained in the; order of appointment on the expiry of stipulated period. Therefore, there was no termination of employment of the petitioner, which would come within purview of "retrenchment". It was further contended that such ad-hoc appointment was made while awaiting recruitment through the Board, according to the Regulation of recruitment and that process of recruitment was continuing during the period when the petitioner was given appointment. Therefore, even assuming but not admitting it was a case of retrenchment, then again there cannot be any question of reinstatement with back wages in view of Regulation-5 of U.P. Co-operative Societies Employees Service Regulations, 1975 (hereinafter referred to as the said regulation). Therefore, the present writ petition should be dismissed.

3. Ms. Suman Sirohi led by Sri K.P. Agarwal, learned counsel for the petitioner contends that the order of termination amounts to retrenchment within the meaning of Section 2(s) of U.P. Act attracting the consequences of Section 6-N of the U.P. Act which is mandatory. The non-compliance of those provisions makes the order of termination liable to be set aside. When such an order is set aside the natural consequence is of reinstatement with back wages and the Labour Court has no alternative but to pass such an order of reinstatement with back wages. The Labour Court had found that the petitioner had worked for more than 240 days in a year and was in continuous service within the meaning of Section 2(g) of U.P. Act. Since the Tribunal had found in favour of the petitioner it ought to have granted the relief, as claimed. Therefore, by means of present writ

petition only that part of the order of the Tribunal by which reinstatement with back wages has been refused, has been challenged. Ms. Suman Sirohi, learned counsel for the petitioner, supports the findings of the learned Tribunal. She leads me to para-5 of the Award wherein the learned Tribunal had found that the Respondent No. 2 had been following unfair labour practice, though purporting to follow regulations for recruitment in letters without the spirit. Therefore, it was incumbent upon the Tribunal to order for reinstatement with back wages.

4. Sri Rakesh Tewari, learned counsel for the respondent No. 2, contends that in view of Regulation-5 of the said Regulation, no one other than the Board could make recruitment and that too in the manner provided in the said regulation. Admittedly, the petitioner's appointment was not made in terms of Regulation-5. According to him the appointment was made within the exception provided in such regulation, wherein it was specified that ad-hoc appointment of the limited period can be made by the person other than the Board with the approval of the Board. Since such appointments, each of which are fresh, independent, separate and distinct ad-hoc appointment of limited period, are exempted within the exception as provided in the definition of "retrenchment" in Section 2(oo) of the Central Act. Therefore, according to him, the cessation of the employment not being termination and having been exception within meaning of retrenchment, as defined in Section 2(oo) of the Act the contention of Ms. Sirohi and the finding of the learned Tribunal that the petitioner is entitled to retrenchment compensation is wholly misconceived. Therefore, there cannot be a question of reinstatement with back wages. That apart Regulation-5 stares on the face, which bars recruitment in the manner other than provided in Regulation-5 which would not be justified for the Tribunal to direct reinstatement with back wages. Therefore, according to him the writ petition should be dismissed. He further contends that in view of Regulation-103 of the said Regulation the provisions of the Industrial Disputes Act would yield to the special statute, governing the field.

5. In order to appreciate the rival contentions, it is necessary to quote Regulation-5 which runs as under:

"5. Recruitment --(i) Recruitment for all appointments in a co-operative society shall be made through the Board whether the recruitment is--

(a) direct, or

(b) by promotion from employees already in the service of the society; or

(c) by taking on deputation or otherwise a person already in the service or another society, registered or deemed to have been registered under the Act, or a person in employment under a Corporation or an undertaking owned or controlled by the Central or the State Government body corporate administering a local fund.

(ii) Notwithstanding anything in Clause (i) no reference to the Board shall be necessary in the following cases--

(a) when it is proposed to fill with the concurrence of the Registrar any post by means of deputation of a Government servant, or

(b) when the Managing Committee or any other authority competent to make the appointment proposes to fill up, as a stop-gap measure for a period not exceeding six months, a post by promotion from amongst the employees in the just below cadre on the principle of seniority, subject to the rejection of the unfit:

Provided that any appointment thus made without consultation with the Board, shall, in every case, cease to have effect from the date on which the period of six months expires and the employee promoted to the higher post shall, unless he has already been reverted to his original post within the said period of six months, be deemed to have reverted from that date, to the post held by him immediately before such promotion:

Provided further that the employee appointed to the higher post under this sub-clause shall, in no circumstances, be promoted under this sub-clause to any still higher post within the said period of six months nor shall be appointed under the sub-clause to the same post again after his reversion under the first provision.

(iii) The Board may, pending selection for post to be filled in by direct recruitment, permit stop gap arrangement to be made by the appointing authority for a period not exceeding 180 days:

Provided that the intimation of such appointment is given to the Board forthwith and it is ensured that proper requisition for the post, as also additional information required by the Board, if any, has been furnished to it:

Provided further that the Board may in special circumstances, and at the request of the appointing authority, extend the period of 180 days by a period not exceeding 120 days:

Provided also that the appointment made under this clause shall cease to have effect from the date on which the original period or the extended period of appointment under this clause expires."

6. Before the Tribunal in the written statement the Respondent No. 2 had made out a case that the Service Board had also advertised the vacancies, in which the concerned workman could have participated, claiming relaxation in age on account of his ad-hoc work. The petitioner being daily wage ad-hoc employee he cannot claim employment through back door unless he participated in the open market competition for direct selection through the Services Board. Admittedly the petitioner was not appointed through the procedure as laid down in Regulation-5 and his appointment was made by way of stop gap arrangement, pending selection for period not exceeding 180 days in terms of Clause (iii) of Regulation-5, as quoted above.

7. It has been found by the learned Tribunal in para 5 of the Award that the petitioner gave number of applications from time to time for extension of his

employment and every time he was given fresh ad-hoc appointment for 90 days or less. It has also been found by the learned Tribunal that the said appointment was made following the letters of the said regulation. The third Proviso to Clause (iii) of Regulation-5, which prescribes that such appointment shall cease to have effect from the date on which the original "period or the extended period of appointment under this clause expires." The said finding has not been challenged by Ms. Sirohi. She has only challenged the other part of the Award by which reinstatement with back wages was not given. Therefore, admittedly the appointment is an appointment within meaning of Clause (iii) of Regulations.

8. In Section 2(oo) of the Central Act, the expression "retrenchment" has been defined. Relying on the said definition Sri Rakesh Tewari, learned counsel appearing on behalf of the respondent sought to bring the present termination within the ambit of exceptions made in Clause (bb) thereof. Admittedly, Clause (bb) of the said definition expects termination of service of a workman as a result of non-renewal of the contract of employment or on the expiry of period stipulated in the contract being terminated. Therefore, the said appointment, which had ceased to have the effect on the expiry of the period stipulated in terms of the third proviso to Regulation 5(iii) of the said Regulation comes within the exception as provided in Clause (bb) of Section 2(oo) of the Central Act, and, as such, cannot be termed to be "retrenchment".

9. But Sri Rakesh Tewari, had over-looked the fact that the retrenchment has also been defined in the U.P. Industrial Disputes Act in Section 2(s) which does not make such an exception. The definition of "retrenchment" in Section 2(s) comprehends all kinds of termination of service excepting (i) voluntary retirement and retirement on superannuation after attaining the age as stipulated in the contract. Therefore, Sri Rakesh Tewari, cannot succeed on the said ground.

10. Now the said regulation governs the service conditions of the employees of a cooperative society and has been made u/s 121 and published under Sub-section (2) of Section 122 of the U.P. Co-operative Societies Act, 1965 (U.P. Act No. 11 of 1966). These regulations govern the special class of the workmen employed in the co-operative societies, while the Industrial Disputes Act govern general class of workmen in the industrial establishment. Therefore, the Industrial Disputes Act is the, general law, while the said regulations are special laws. The general law yields to special law, is an established principle of law. In the case of U.P. State Electricity Board, v. H. S. Jain , it was held that the general law shall yield to special legislation. In the case of Western India Match Company Ltd. Vs. Workmen, it was observed that the provisions in the general law would be subject to special law and in case of contradiction special law shall prevail. In the case of The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, , it has been held that, "the rule that general provisions should yield to specific provisions is riot an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and

women that when the same person gives two directions-one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect." In the present case general law namely the Central Act and U.P. Act govern the general workmen in all establishments in general while these regulations govern only the employees of co-operative societies for whom special legislation has been made.

11. By Section 135 of the U.P. Co-operative Societies Act, 1965 it provides that provisions contained in the Industrial Disputes Act, 1947 (Act No. 14 of 1947) and the U.P. Industrial Disputes Act, 1947 (U.P. Act No. 18 of 1947) shall not apply to the co-operative societies. The said Co-operative Societies Act, 1965, in Section 1(3) provides that the said Act shall come into force from such date as the State Government may, by notification in the Gazette appoint in this behalf. All the provisions of the Co-operative Societies Act were given effect to by the State Government with effect from January 25, 1968 by notification dated December 30, 1967 except Section 135. Nothing has been brought to my notice to the effect that Section 135 has been given effect to. But the presence of Section 135 shows the intention of the legislature that it had intended to exclude the application of the said Industrial Disputes Act and the U.P. Industrial Disputes Act. Therefore Regulation 103 (with which we shall deal at a later stage) cannot be said to be inconsistent with the scheme of the said Act, as conceived by the legislature though the Government has not given effect to the same.

12. Section 121 empowers the Registrar to determine the terms of employment of society, by framing regulation to regulate amongst other things, conditions of service. Section 122 of the Cooperative Societies Act empowers the State Government to constitute an authority or authorities for the recruitment, training and disciplinary control of the employees and/or to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees subject to the provisions contained in Section 70, settlement of disputes between an employee of a society.

13. Therefore the special provision regulating the conditions of service can be made so far as the co-operative societies are concerned. Therefore, the regulations framed are valid piece of legislation.

14. Now under Regulation 103 of the said Regulation, specific provision has been made in the following expression:

"103. The provisions of these regulations to the extent of their inconsistency with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any cooperative society or class of co-operative societies, shall be deemed to be inoperative."

Therefore, the Regulation 103, as quoted above, makes it clear that if there is any inconsistency between the regulation and the Industrial Disputes Act, 1947

and any other labour law for the time being in force, the present Regulation shall be applicable and the other laws shall be deemed to be inoperative. Undoubtedly, U.P. Act comes within the meaning of other labour laws for the time being in force. On the other hand Industrial Disputes Act has been specifically mentioned. Therefore, by virtue of Regulation 103 the provisions of the Central Act and U.P. Act shall be deemed to be inoperative as soon as any inconsistency appears in the application of the said Regulation. Therefore, the contention of Ms. Sirohi does not conform to the above situation and, as such, is unacceptable.

15. In the above situation the decision in the case of *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, cited by Ms. Sirohi cannot be of any help. Over and above Clause (bb) was inserted by U.P. Act No. 49 of 1984, Regulation 5(iii) and Regulation 103 were not in existence when the said decision was rendered. The decision in the case of *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, cited by Ms. Sirohi also does not apply, in the facts and circumstances of the case, inasmuch as in the said case the criterion for the grant of compensation, when the retrenchment is held to be invalid, was under consideration, whereas in the present case there is no retrenchment. Even if there was retrenchment in view of Regulation 5 of the said Regulation, the Labour Court was not competent to direct reinstatement of the petitioner, who was not recruited in terms of Regulation-5. Inasmuch as the Labour Court has to act within the ambit of law and to have regard to the Regulations by which the workman is governed, no relief, which is not available to the workman in terms of the regulations, by which he is governed can be granted by the Labour Court. Similarly, the decision in the case of *Postal Seals Industrial Co-operative Societies Limited, Aligarh v. Labour Court(II) Lucknow and Ors.* 1971 (22) FLR 38 cited by Ms. Sirohi is also not attracted in the facts and circumstances of the present case.

16. The decision in the case of *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, on the other hand lays down that the termination of services which are not covered by any exception in Section 2(oo) amounts to retrenchment and non-compliance of Section 25F makes such retrenchment void ab-initio. Therefore, the termination which are excepted u/s 2(oo) of the Act are not retrenchment. This decision cited by Sri Rakesh Tewari supports the view taken above because of Regulation 5(iii) and Regulation 103. On the facts of the said judgment, in the facts and circumstances of the present case the ratio decided in the case of *The State Bank of India Vs. Shri N. Sundara Money*, , does not come to any assistance of Ms. Sirohi. Inasmuch as in the said case the proposition has been laid down that every kind of termination is retrenchment within the meaning of Section 2(oo) of the Act, there is no dispute about such proposition. But Section 2(oo) itself makes exception of such termination which are not retrenchment and the present case being one such exception in view of Regulation 5(iii) and 103, the said decision cannot extend any help to Ms. Sirohi with regard to her submissions. Similarly, the ratio decided in the case of *H.D. Singh Vs. Reserve Bank of India and Others*, does not help Ms. Sirohi, in the facts and

circumstances of the present case. Inasmuch as despite findings of the Labour Court that the petitioner had worked for more than 240 days, the termination, being an exception, in view of Regulation 5(iii) read with Regulation 103, does not confer consequential benefit of retrenchment because of his continuous service which becomes irrelevant as soon as the termination comes within the exception of Clause (bb) of Section 2(oo) of the Act. In similar situation the workman who had been engaged for a fixed period and whose service came to an end after expiry of the contract period, though he had worked for more than 240 days due to successive such appointment of fixed period within a period of 12 months, the cessation of employment does not come within the ambit of Section 6-N of the U.P. Act, was so held in the case of U.P. Rajya "Sahkari Krishi Evam Gram Vikas Bank Limited v. Labour Court, Allahabad and Ors. 1994 (68) FLR 1195 . In the case of U.P. State Co-operative Land Development Bank Ltd. v. Labour Court, Allahabad and Ors. and the case of U.P. State Co-operative State Land Development Bank v. Taj Mulik Ansari, being SLP (C) 7592/93, as has been referred to in the case of U.P. Rajya Sahkari Krishi Evam Gram Vikas Bank Ltd. (supra), it was held that the mere fact that the workman had put in more than 240 days as daily rate employee, does not entitle him for regularisation in his employment. The contention of Sri Rakesh Tewari also finds support from the decision in the case of F.R. Jesuratnam Vs. Union of India (UOI) and Others, as referred to in the case of U.P, Rajya Sahkari Krishi Evam Gram Vikas Bank Limited (Supra).

17. For all these reasons I am not inclined to interfere with the impugned award. The writ petition, therefore, fails and is dismissed. The Respondent No. 2, however, shall make payment of the amount as directed in the impugned award, calculated according to the directions given therein, calculating the interest payable till the date of payment.