

(2004) 01 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition Lodging No. 434 of 2003

Virendra Kumar and Another

APPELLANT

Vs

Uttaranchal Forest Development Corporation and Others

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Constitution of India, 1950 — Article 246(3)
Factories Act, 1948 — Section 2
Industrial Disputes (Central) Rules, 1957 — Rule 2, 4
Plantations Labour Act, 1951 — Section 2
Uttar Pradesh Industrial Disputes Act, 1947 — Section 10, 10A(3A), 2, 25F, 25K

Citation : (2004) 01 UK CK 0002

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Suman Sirohi, for the Appellant; V.K. Bisht, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Ms. Suman Sirohi, learned Counsel for the Petitioners and Sri V.K. Bisht, learned Counsel for the Respondents.

2. By means of this writ petition, the Petitioners have prayed for the issue of a writ of certiorari quashing the award dated 10th August 2001 published on 6th April 2002 alongwith the retrenchment order dated 30th May 1995. The Petitioners have also prayed for the relief of reinstatement with continuity of service with back wages.

3. Brief facts giving rise to the present writ petition, according to the Petitioners, are that both the Petitioners were appointed as Scalar in the year 1982-83 and they had worked continuously till the date of their retrenchment i.e. 30.5.2003. Petitioners have also stated that their wages alongwith other employees were revised by the III waged Board. The recommendation was accepted in the year 1994 by the Respondents, but the Petitioners were not paid the revised pay-scale i.e. 950-1350 for which the employees were legally entitled. On 30th May 1995,

according to the Petitioners, they were served with retrenchment notices on the basis of which the services of the Petitioners were terminated. The Petitioners thereafter, have raised the industrial disputes u/s 4-K of the U.P. Industrial Disputes Act.

4. According to the case of the Petitioners before the Labour Court was that they are continuing in that establishment since 1983 as daily wagers on the post of Scalar and upto 30th May 1995 they continued to work and all of a sudden their services have been terminated from 31st May 1995. The Petitioners have stated that the retrenchment of the Petitioners are wholly illegal in view of the provisions of U.P. Industrial Disputes Act, 1947 as without the approval of the Government, the retrenchment was not possible.

5. The employer has filed the reply and in it's affidavit filed in support of the written statement it has been admitted that the services of the Petitioners were engaged w.e.f. 11.02.1983 as a daily rated worker and they performed the duties of Scalar. It is further admitted that services of the Scalars were retrenched w.e.f. 31.05.1995, which was in accordance with the provisions of Section 6-N of the U.P. Industrial Disputes Rules 1957.

6. The Labour Court, therefore, has passed the order that the termination of the services of the Petitioners are not illegal.

7. Learned Counsel for the Petitioners have submitted that those persons who were appointed on 1st July 1990, their services have been regularized, but the services of the Petitioners who were appointed in the year 1982 have been terminated. Further it has been stated in the writ petition that 19 workmen who have been illegally terminated by the department, have raised industrial dispute and retrenchment of these 19 workmen were declared illegal and the department has preferred writ petitions challenging the order passed by the Labour Court and the same have also been dismissed by this Court.

8. The Petitioners have submitted that the award of the Labour Court is illegal in as much as provisions of Section 25-N of Industrial Disputes Act have not been complied with.

9. The Petitioners have submitted that for non-compliance of the conditions contained in Section 25N, retrenchment order as well as award are illegal.

10. The Second contention of the Petitioners that the Forest Corporation is a "factory" as defined under Clause (m) of Section 2 of the Factories Act where the manufacturing process is carried on by engaging the workmen for cutting the trees by axe and changing the shape of the timber into logs by using hand driven saw. In process a large number of workmen (more than 100 workmen) are working in the corporation. Therefore, the corporation, being an establishment, is within the definition of industrial establishment u/s 25L contained in Chapter V-B. Hence, the provision of Section 25N will be applicable and without complying the procedure prescribed for retrenchment u/s 25N the order will be in nullity. The

Labour Court, after considering the rival contentions has recorded the findings that the Forest Corporation cannot be said to be a "factory" under the Factories Act.

11. Learned Counsel for the Petitioners has placed reliance on the amending Act, where a new Chapter V-B of the Industrial Disputes Act has been added. Effect of this amendment is that the industrial establishment has been classified into two categories. In one category Chapter V-A will apply and in another category Chapter V-B will apply. Chapter V-B of the Industrial Disputes Act contains Sections 25-K to 25-S.

12. By the same amending Act No. 32 of 1976 "industrial establishment" was defined u/s 2-ka in Chapter V-B which reads as under:

(ka) "Industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then-

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

13. Ms. Suman Sirohi, learned Counsel for the Petitioners has referred the provision of Section 25-K, L and N which reads as under:

Section 25K(1) The Provisions of the chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Section 25L:

(a) "Industrial establishment means-

(i) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948):

(ii) a mine as defined in Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952): and

(iii) a plantation as defined in Clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in Sub-clause (ii) of Clause (a) of Section,-

(i) in relation to any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation (not being a corporation referred to Sub-clause (i) of Clause (a) of Section 2 established by or under any law made by Parliament. the Central Government shall be appropriate Government.

Section 25-N.-

(1) No workman employed in any industrial establishment to which this Chapter applies, 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 three months" 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, and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette thereafter in this section referred to as the specified authority has been obtained on an application made in this behalf.

(2) An application for permission under Sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under Sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under Sub-section (1) and the appropriate government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate government or the specified authority granting or refusing to grant permission shall, subject to the provisions of Sub-section (6), be final and binding on all the parties concerned and shall remain in force for one

year from the date of such order.

(6) The appropriate government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication:

PROVIDED that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under Sub-section (3) or where permission for retrenchment is deemed to be granted under Sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

14. Section 38 of the Industrial Disputes Act provides that the appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of the Act, which reads as under:

Section 38:

Power to make rules

(1) The appropriate government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the powers and procedure of conciliation officers, Boards, Courts, [Labour Courts, Tribunals and National Tribunals] including rules as to the summoning of

witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;

[(aa) the form of arbitration agreement, the manner in which it maybe signed by the parties [the manner in which a notification may be issued under Sub-section (3A) of Section 10A], the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;

(aaa) the appointment of assessors in proceedings under this Act;]

(b) the constitution and functions of and the filling of vacancies in Works Committees and the procedure to be followed by such Committees in the discharge of their duties;

(c) the allowances admissible to members of Courts [and Boards and presiding officers of Labour Courts, Tribunals and National Tribunals] and to assessors and witnesses;

(d) the ministerial establishment which may be allotted to a Court, Board, [Labour Court, Tribunal or National Tribunal] and the salaries and allowances payable to members of such establishments;

(e) the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notices shall be communicated;

(f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court, [Labour Court, Tribunal or National Tribunal];

(g) any other matter which is to be or may be prescribed.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

[(4) All rules made under this section shall, as soon as possible after they are made, be laid before the State Legislature or, where the appropriate government is the Central Government, before both Houses of Parliament.]

[(5) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in [two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

15. Section 2(a) of the Industrial Disputes Act defines the appropriate

Government. The Central Government shall be the appropriate Government in relation to any Company in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or in relation to any corporation (not being a corporation referred to Sub-clause (i) of Clause (a) of Section-2, established by or under any law made by Parliament as provided under Clause (b) of Section 25L.

16. It is evident that the appropriate Government by framing the Rules known as The Industrial Disputes (U.P.) Rules, 1976 has made the Section 25N applicable in relation to industrial establishment in the State of U.P., which is an industrial establishment as defined u/s 25L of Chapter V-B.

17. Similar controversy has come up in writ petition No. 1376 (M/S) 2001 Jabar Singh and eleven Ors. v. Presiding Officer Labour Court and three Ors. 2003 U.D. 635 in which His Lordship Hon''ble Mr. Justice P.C. Verma has held as under:

There is no provision under the U.P. Industrial Disputes Act like provisions contained in Chapter V-B of the Industrial Disputes Act. Therefore, the provision of Chapter V-B shall ipso facto apply in State of Uttar Pradesh as it is the law made by the Parliament under Article 246(3) read with entry 22 of list III. It is in this legal back ground that the State of U.P. has made The Industrial Disputes (Uttar Pradesh) Rules, 1976 in exercise of the powers conferred by Sub-section (1) of Section 38 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), after the same having previously been published for objection and suggestions vide Notification No. 1819 (ST)/XXXVI-1127 (ST)-76, dated March 18, 1976 to give effect to the provisions of Chapter V-B of the Industrial Disputes Act in State of Uttar Pradesh.

Rule 2 provides the definition, which is reproduced as under:

2. Definition - In these rules, unless the context otherwise requires-

(a) "Act" means the Industrial Disputes Act, 1947;

(b) "Form" means a form appended to these rules;

(c) "Section" means a section of the Act;

(d) Words and expressions used in these rules and not defined therein, but defined in the Act shall have meanings assigned to them in the Act.

Relevant Rule 4 for application of Section 25N in the State of U.P. reads as under:

4. Notice of and application for permission for, retrenchment-

(1) Notice under Clause (c) of Sub-section (1) of Section 25N for retrenchment shall be served in Form "D" on such authority as may be specified by the State Government either personally or by registered post acknowledgement due and where the notice is served by registered post, the date on which the same was delivered to such authority shall be made deemed to be the date of service of the notice for the purposes of Sub-section (3) of the said section.

(2) Application for permission for retrenchment under Sub-section (4) of Section 25N shall be made in Form "E" (with attested copy of the notice given by the employer under Clause (a) of Section 25-F and delivered to such authority as may be specified by the State Government either personally or by registered post acknowledgement due and where application is sent by registered post the date on which the same was delivered to the State Government or the authority shall be deemed to be the date on which the application was made for the purposes of Sub-section (5) of the said section.

(3) The notice or, as the case may be, the application shall be served in triplicate and sufficient number of copies of the application for service on the workmen concerned shall be submitted along with the notice or, as the case may be, the application.

(4) The employer concerned shall furnish to the State Government or the authority to whom the notice for retrenchment has been given under Clause (c) of Sub-section (1), or, as the case may be, Sub-section (4) of the said Section 25-N, such further information as the State Government or, as the case may be, the authority considers necessary for arriving at a decision on the notice or, as the case may be, application, as and when called for by such authority, so as to enable the State Government or the authority to communicate its permission or refusal to grant permission within the period specified in Sub-section (3), or, as the case may be, Sub-section (5) of the said Section 25-N.

The appropriate Government by framing the Rules known as the Industrial Disputes (Uttar Pradesh) Rules, 1976 have made the Section 25N applicable in relation to industrial establishment in/of State of U.P., which is an industrial establishment as defined u/s 25L of Chapter V-B.

Therefore, I hold that the industrial establishment in/of State of U.P. which falls within the definition of Section 25L of Industrial Disputes Act, retrenchment therein shall be made strictly in accordance with the provisions of Section 25N of the Central Act read with Section 4 of The Industrial Disputes (Uttar Pradesh) Rules, 1976. Any retrenchment made in violation of this Section shall be void.

18. Second aspect of the matter argued by the learned Counsel for the Petitioner is whether the Forest Corporation is an industrial establishment within the definition of Section 25L. Counsel for the Petitioner has placed reliance on the judgment of the Ardeshir H. Bhiwandiwalla v. State of Bombay reported in AIR 1962 SC page 29 in which the Apex Court has held that the meaning of premises is wide and is used to denote the "land without any boundary".

19. The aforesaid judgment has further been followed by the Apex Court in Lal Mohammad v. Indian Railway Construction Co. Ltd. 1999 LAB. I.C. 407 holding the project undertaken by the Railway Construction Company to be a factory.

20. Since, Chapter V-B of the Act was inserted by Industrial Dispute amendment Act, 1976, Act No. 38 of 1976 therefore, reference u/s 4-K of U.P. Industrial

Disputes Act was fully valid. The similar controversy has also been decided in the Jabar Singh's case and the Hon'ble Single Judge has held as under:

...The validity, legality or illegality, of a retrenchment order referred for adjudication does not depend on the factor that under which provision the reference is made, i.e., either u/s 4-K of the U.P. Industrial Disputes Act or u/s 10 of the Central Act. The validity of the retrenchment is to be judged whether the retrenchment is in accordance with the provisions of either 6-N of the U.P. Industrial Disputes Act which is para materia with Section 25-F of the Industrial Disputes Act or is in accordance with Section 25-N of the Industrial Disputes Act is attracted in the facts and circumstances of the case. As it has been held in this judgment that in the facts and circumstances of the case, 25-N of the Industrial Disputes Act was attracted, therefore, the validity of the retrenchment order is to be adjudged solely by determining the question as to whether the provisions of Section 25-N of the Industrial Disputes Act were complied with or not.

21. The present writ petition is squarely covered by the order passed in writ petition No. 1376 (M/S) 2001 Jabar Singh and eleven Ors. v. Presiding Officer Labour Court and three Ors.

22. In view of the aforesaid facts and circumstances the writ petition is allowed. The findings of the Labour Court that Section 25N is not attracted but 6N alone was attracted, is set aside. The retrenchment of the Petitioners being in violation of Section 25-N of the Industrial Disputes Act, are quashed. The Petitioners shall be put back on duty and shall be paid salary/wages. There will be no order as to costs.

23. With the aforesaid observations, the writ petition is disposed of.