

Arvind Kumar Agarwal Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-28-1997

Reported in : (1998)1UPLBEC163

Judge : O.P. Garg, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 6N; Uttar Pradesh Co-operative Societies Employees' Service Regulations, 1975 - Regulation 5; Uttar Pradesh Cooperative Societies Act, 1965 - Sections 121

Appeal No. : Civil Misc. Writ Petition No. 17521 of 1990

Appellant : Arvind Kumar Agarwal

Respondent : State of U.P. and ors.

Advocate for Def. : Shyam Narain, Adv. and ;S.C.

Advocate for Pet/Ap. : Subodh Kumar and ;Subhash Kumar, Adv.

Disposition : Petition dismissed

Judgement :

O.P. Garg, J.

1. In this writ petition, under Article 226 of the Constitution of India, it is prayed that a direction be issued to the respondents in the nature of writ of mandamus to treat

the petitioner in continuous service and to award all the benefits to which the petitioner is entitled as per service Rules of the Bank.

2. Counter and rejoinder affidavits has been exchanged. Heard Sri Subodh Kumar, learned Counsel for the petitioner and Sri Shyam Narain, learned Counsel for the respondent No. 2-Secretary/General Manager, Pilibhit District Co-operative Bank as well as learned Standing Counsel on behalf of the State. It is an admitted fact that the petitioner Arvind Kumar Agarwal was engaged on daily wage basis for specified periods at intervals on the post of Clerk-cum-Cashier, in the Pilibhit District Co-operative Bank. Initially the petitioner was appointed on 18.8.1986 on the daily wage basis at the rate of Rs. 25/- per day for a period of three months. He ceased to work on 11.11,1986 as would be evident from Annexure C.A. 1 and C.A. 2 to the counter affidavit. He was again appointed on 4.12.1986 for a period of six months on ad hoc basis and again on 1.7.1987 and thereafter he continued to be appointed on daily wage basis @ Rs. 35/- per day for three months at a time right upto 13.7.1989. The period of engagement of the petitioner was not extended beyond 7.10.1989. Sri Subhash Kumar, learned Counsel for the petitioner vehemently argued that the termination of ad hoc appointed of the petitioner was wholly illegal and arbitrary and since the petitioner had worked for more than 240 days in every calendar year, in the preceding three years, he was entitled to a regular appointment and in any case, the termination of service was in flagrant breach of provisions of Section 6-N of the U.P. industrial Disputes Act, 1947 (hereinafter referred to as 'the U.P. Act') In the counter affidavit, it is alleged that the petitioner did not work continuously for 240 days in one calendar year and that he is not entitled to the status of a permanent employee, though it is admitted, that the petitioner did work on piece-meal engagement of six months at one time and three months on rest of the occasions during the years 1986 and 1989.

3. Sri Subodh Kumar, learned Counsel for the petitioner placed reliance on a number of decisions, such as 1989 (2) U.P.L.B.E.C. (Lucknow Bench) 144, Jai Kishan and Ors. v. U.P. Cooperative Bank Ltd. and Ors.; 1991 (2) U.P.L.B.E.C. 1267, U.P. Bank Employees Union, Fatehpur Unit, Fatehpur and Ors. v. District Co-operative Bank Ltd., Fatehpur and Ors.; 1994 (3) U.P.L.B.E.C. 1714, Prabhu Narain Rai and Anr. v. Secretary-cum-General Manager, Central Co-operative

Bank Ltd., Jhansi and Ors., and (1996) 9 SCC 217 : 1997(1) UPLBEC 517 (SC), 217 Inspector General of Registration, U.P. and Anr. v. Avdesh Kumar and Ors., in support of his contention that since the petitioner had worked on daily wage basis and was allowed to continue for years together with certain artificial short breaks and had worked in each calendar year for more than 240 days, the provisions of Section 6-N of the U.P. Act would be application and any order of termination, which does not comply with the aforesaid provisions would be bad in law. Regularization of service is claimed on the basis of three years continuous officiation on the post of Clerk-cum-Cashier in the light of the observations made by the Supreme Court in Avdesh Kumar's case, which related to the regularization of service of those employees who worked as Registration Clerks prior to 1.10.1986 for more than 3 years continuous period. The various submissions of the learned Counsel for the petitioner have been repelled by Sri Shyam Narain who appeared on behalf of the respondent No. 2 Bank. It was pointed out that in view of the specific regulations made under the U.P. Cooperative Societies Act, 1965, the provisions of the Industrial Disputes Act (Central) shall not apply to be case of an employee appointed in the Cooperative Bank.

4. I have given thoroughful consideration to the matter and find that the contention raised on behalf of the respondent No. 2-Bank is well merited in view of the following discussion.

5. The U.P. Co-operative Societies Employees Service Regulations, 1975 (hereinafter referred to as 'the Regulations of 1975') made under Section 121 of the U. P. Co-operative Societies Act, 1965 (U.P. Act No. XI of 1965) deal with the strength of staff recruitment, appointment, probation, confirmation termination and retirement of employees of the Co-operative Societies. A Board, viz. U.P. Co-operative Institutional Service Board has been constituted for the recruitment of the employees. The provisions contained in the U.P. Act are all pervading and general in nature, while the provisions of Regulations of 1975 are specific and special, with reference to the employees of the Cooperative Department. The submission of the learned Counsel for the respondent-Bank that the provisions of the Regulations of 1975 would prevail as against the general provisions of the U.P. Act is quite weighty in view of the various decisions on the point. In a different

context, the matter cannot to be considered by Supreme Court in *N. Venugopal v. Divisional Manager, Life Insurance Corporation Machlipattanam, A.P. and Ors.*, A.I.R. 1994 SC 134. It was ruled by the Supreme Court that the termination of the service of a probationer for failure to achieve stipulated target in contract of employment is not retrenchment having been covered by the provisions of Section 2(bb) of the Industrial Disputes Act. The regulations framed under Section 48 of the Life Insurance Corporation Act has the overriding effect over the provisions contained in the Industrial Disputes Act, so far as terms and conditions of the employment of such employees who also conform to the requirement of definition of 'workman' under the Industrial Disputes Act, are concerned. In a decision of this Court reported in 1994 (69) F.L.R. 290 *Luxmi Raj Singh and Anr. v. State of U.P.*, it was held that termination of service of petitioners which occurred as a result of non renewal of contract of employment would not amount to 'retrenchment' and, therefore, the provisions of Section 6-N of the U.P. Act or any other provisions would not be attracted. In the said case, it was noticed that in the Central Act, i.e., Industrial Disputes Act, definition of retrenchment, as contained in Section 2(oo) has been amended by Act No. 49 of 1984 and since there is repugnancy in the matter of definition of retrenchment in the Central Act, i.e., Industrial Disputes Act and the U.P. Industrial Disputes Act, the amended definition, as contained in the Central Act shall prevail by virtue of Article 254 of the Constitution of India. In a recent decision of this Court, reported in 1997 (75) F.L.R.844 : (1997)1 UBLBEC 517, *Vikramaditya Pandey v. Industrial Tribunal II and Anr.*, the point came to be considered directly with reference to the provisions of the Regulations of 1975 and Section 6-N of the U.P. Act. The following observations may profitably be quoted :-

'Now the said Regulation governs the service conditions of the employees of a co-operative society and has been made under Section 121 and published under sub-section (2) of Section 122 of the U.P Co-operative Societies Act, 1965 (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 law. The general law yields to special law, is an established principle of law. In the case of *U.P. State Electricity Board and Ors. v. Hari Shankar Jain and Ors.*, 1978 FLR 280, it was

held that the general law shall yield to special legislation. In the case of *Mary Seward v. The owner of the Vera Cruz*, 1974 (1)SCR 434, 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 *J.K. Cotton Spinning and Weaving Mills Company v. State of U.P.*, 1961 (2) FLR 529, it has been held that 'the rule that general provisions should yield to specific provisions is not 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.'

6. In the backdrop of the above decision, there is no escape from the conclusion that the provisions of Section 6-N of the U.P. Act are not attracted to the instant case and the Special Law, as contained in the Regulations of 1975 shall prevail.

7. There is yet another aspect of the matter. In a number of decisions, much as, *E.R. Jesuratnam v. Union of India*, 1981 (43) F.L.R. 264 (S.C.) ; *Madhyamik Siksha Parishad v. A.K. Misra and Ors.* 1994 A.L.J. 389 (SC.); *U.P. Rajya Sahkari Krishi Evam Gramya Vikas Ltd. v. U.P. Labour Court, Allahabad and Ors.*, 1994 (68) F.L.R. 1195, the view taken is that the mere fact that the workman has put in more than 240 days as daily rated employee does not entitle him for regularization in service. To cap all the aforesaid rulings, there is recent decision of the Supreme Court in 1997 (76) F.L.R. 237, *Himanshu Kumar Vidhyarthi and Anr. v. State of Bihar and Ors.*, in which it has been held that when the appointments are regulated by statutory rules, the concept of 'Industry' to that extent stands excluded. In that case the services of daily wager, a temporary employee, were terminated. It was held that he had no right to the post and his disengagement was not arbitrary and that he cannot be treated under the Industrial Disputes Act.

8. In *Director, Institute of Management Development U.P. v. Smt. Pushpa Srivastava*, 1992 (65) F.L.R. 371 (S.C), it has been ruled by the Supreme Court that where the appointment is contractual and by efflux of time, it comes to an end, the appointee can have no right to continue on the post. In answer to the question as whether continuance of services of such persons, appointed from time to time on ad hoc basis for granting or entitling them to claim regularization, the Supreme Court held that since the appointment was purely on ad hoc and contractual basis for a limited period, therefore, by expiry of stipulated period, the right to remain on the post came to an end. The matter to come to be further elaborated in the case of *State of Himachal Pradesh v. Suresh Kumar Verma*, 1996 J.T. (2) S.C. 455, wherein it has been laid down that appointment on daily wage basis is not an appointment on a post. A person appointed to a post can be directed to be reinstated in service by the Court, if the order terminating his services is set aside; but when the person does not hold any post, the question of his reinstatement in service does not arise. In view of the well settled proposition of law, the petitioner who was admittedly appointed on ad hoc basis in piece meal, can have no right to hold any post. The contractual appointment came to an end on the expiry of the limited period for which the appointment was made. The learned Counsel for the respondents further pointed out that there is no vacancy on which the petitioner may be accommodated and that now the appointments are made under the 1975 Rules by the U.P. Cooperative Institutional Service Board, which has been constituted for the purpose of recruitment of the employees.

9. In conclusion, I find that the writ petition has no merit and being devoid of any substance, has to be dismissed.

10. The writ petition is accordingly dismissed.