

Nagar Nigam Vs. Assistant Labour Commissioner and anr.

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SooperKanoon Citation : sooperkanoon.com/491573

Court : Allahabad

Decided On : Sep-21-2002

Reported in : (2003)1UPLBEC70

Judge : S.N. Srivastava, J.

Acts : Uttar Pradesh Industrial Disputes Act, 1947 - Sections 2 and 6N

Appeal No. : Civil Misc. Writ Petition No. 31701 of 1994

Appellant : Nagar Nigam

Respondent : Assistant Labour Commissioner and anr.

Advocate for Def. : N.K. Srivastava, Adv.

Advocate for Pet/Ap. : G.D. Srivastava, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Srivastava, J.

1. Present petition has been filed canvassing the validity of award delivered by the Labour Court on 28.2.1994 (Annexure 6 to the petition) attended with a further relief of mandamus restraining the Labour Court from implementing the award dated 28.2.1994.

2. Matrix of the necessary facts as bear of the controversy involved in this petition is that Sri Prabhu Dayal, arrayed as respondent No. 5 in the present petition was engaged on daily wage basis on the post of clerk in the Accounts Department of the Nigam for a specified period i.e., 60 days with the stipulation that his services were liable to be terminated after expiry of the prescribed period at any time without assigning any reason in accordance with the private of contract between the Nagar Nigam and the respondent No. 5. It transpires from the record that the services of the petitioner were extended from time to time and each extension is stacked up back to back without there being any break and the extension granted from time to time endured upto 31.10.90. It would further transpire from the record that the services of the respondent No. 5 came to be terminated by means of the order dated 22nd October, 1990 passed by Mukhya Nagar Adhikari, Bareilly. Aggrieved by the order of termination of his services, the respondent No. 5 knocked the door of Labour Court. The proceeding pending before the Labour Court culminated in award aforestated and the quintessence of finding recorded by the Labour Court is that the respondent No. 5 had worked from 31.10.88 to 22.10.90 in unbroken continuity and that in a calendar year, he had worked for more than 240 days. It has also been noticed in the award that no notice was served to the workman nor wages in lieu of period of notice of compensation for retrenchment have been paid to the workman.

3. I have heard Sri G.D. Srivastava, learned Senior Advocate appearing for the petitioner and Sri N.K. Srivastava, for the respondent workman. Sri G.D. Srivastava, learned Senior Advocate, inter-alia submitted that the petitioner was appointed on daily wage basis initially for two months and that though he was sustained. In service on extension granted from time to time in unbroken continuity, he was not entitled to be given protection of Section 6-N of the U.P. Industrial Disputes Act read with Section 25F of the Industrial Disputes Act. He further contended that the Tribunal erred in holding that the petitioner was entitled to get any notice or compensation for the notice period given the phraseology of the orders giving extension to the workman passed from time to time and that the workman who was appointed for different period by different orders though worked continuously but was paid wages as Daily wage employee and that his services were never regularised and therefore, he cannot be given the protection of Section

6-N of the U.P. Industrial Disputes Act and by this reckoning award is vitiated and cannot be sustained in law. It is in the above perspective that question : 'Whether a Daily wage employee who is not otherwise entitled to regularisation is entitled to be given protection of the provisions under Section 6-N of the U.P. Industrial Disputes Act.' Reference in connection with the proposition propounded by the learned Counsel for the petitioner, has been made to the decisions reported in Himansuhu Kumar Vidyarthi and Ors. v. State of Bihar and Ors. : [1997]3SCR368 . Yet another decision cited in support of the contention is the decision in Kumaon Motor Owners Union Ltd. v. State of U.P., and Ors., (1994) 2 UPLBEC 1106, followed by decision in Rajesh Pratap Singh v. District Registrar Registration Office, Basti, (1995) 1 UPLBEC 403, in order to give prop to his submissions. These two decisions too are inapplicable to the present case inasmuch as the decision in these cases stems from different set of facts and circumstances and do not involve a vestige of controversy involved in this petition. The Sri N.K. Srivastava appearing for the workman canvassed that the petitioner had been appointed on ad hoc basis initially for a period of two months but he was granted extensions from time to time and he worked in unbroken continuity upto 31.10.90. The learned Counsel further contended that the respondent No. 5 has already completed more than 240 days in a calendar year as per requirements and by this reckoning, he was entitled to protection under the provisions of Section 6-N of the U.P. Industrial Disputes Act. In the present case, proceeds on the submission, the respondent workman was neither served with any notice nor was paid wages for the period of notice/compensation for retrenchment was paid and in this perspective, the award was rightly given. He cited decision in U.P. Vidyut Mazdoor Sangh Lucknow and Ors. v. U.P. State Electricity Board Lucknow and Ors., (1997) 2 UPLBEC 1295, and decision in State Bank of India v. Sri N. Sundara Money, 1976 SCC (L & S) 132, to hammer home his submissions.

4. In view of the controversy involved in this petition, for proper appreciation of the controversy Section 6-N of the U.P. Industrial Disputes Act may usefully be quoted below :

'6-N. Conditions precedent to retrenchment of workmen-No workman employed in any industry 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 one month's 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 :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government.'

It would thus crystallise that no workman employed in any Industry and who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until he has been given one month's notice in writing indicating the reasons for retrenchment and has been paid wages in lieu of such notice for this period. The only exception is that if retrenchment has been made under an agreement, which specifies the date of termination.

5. Before proceeding further, I will first notice the decisions cited by the learned Counsel for the petitioner. In *Himanchu Kumar Vidyarthi and Ors. v. State of Bihar and Ors.* (supra), which the learned Counsel for the petitioner has copiously cited as sheet-anchor of his arguments, the petitioners were appointed on daily wages as Assistant Driver and Peon in Co-operative Training Institute under the State Government, were terminated from service. It was a case in which petitioners were not appointed in accordance with the statutory rules but were engaged on the basis of the need of the work. The aforesaid decision is distinguishable inasmuch as in the case in hand, the petitioner has not come up with the plea that the workman was appointed in antagonism of any statutory rule and therefore, it does not lie in the mouth to assert that the workman being ad hoc employee his services were liable to be terminated without regard being had to the requisites of the provisions of Section 6-N of the U.P. Industrial Disputes Act. The ratio in the

decision cited by the learned Counsel flows from facts distinct from the facts of the present case and the same is unavailing to the facts of the present case. They contended that they were retrenched from service in violation of Section 6-N of the U.P. Industrial Disputes Act, 1947. The Apex Court held that every department of the Government cannot be treated to be industry, in the context of the above, I feel inclined to focus on the meaning of the word 'workman' as defined in Section 2(z) of the U.P. Industrial disputes Act, 1947 :

'Workman¹ means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950 or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the Police Service or as an Officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.'

6. It is not disputed that Nagar Nigam is an 'industry' and by this reckoning, there can be no dispute that the workman would be a workman within the meaning of the expression in Section 2(s) of the Act. In the light of the decision in Himanshu Kumar Vidyarthi's case (supra), the quintessence of the submission of the learned Counsel is that the workman being ad hoc, his services were liable to be

terminated at any time and the provisions of Section 6-N cannot be imported to give the termination of the respondent's services, colour of retrenchment. My own view to this contention is that assuming that he was a daily rated worker, once he has rendered continuous uninterrupted service for a period of 240 calendar days in a year and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, it would have to be read subject to the provisions of the Act. The above view receives reinforcement from the decision of the Apex Court in Bhikoba Shanker v. Mohan Lal Punchand : [1982]3SCR218 .

7. The two other decision cited by the learned Counsel, have no similarity with the facts of the present case and the ratio flowing from the said decision cannot be stretched so far as to be applied to the facts of the present case. Yet another decision relevant to the controversy involved- in this petition is the decision in Robert D'souza v. Executive Engineer, Southern Railway and Anr. : (1982)ILLJ330SC . It was a case in which the appellant joined service in the Southern Railway as a Gangman. He rendered continuous service in the Construction Division for not less than 20 years. The quintessence of what has been held by the Apex Court is that even casual or seasonal workmen who render continuous service for one year cannot be retrenched on such ground without complying with the requisites of Section 25F. The relevant paragraph is Paragraphs 27 which is excerpted below :

'It is immaterial that he is a daily-rated worker. He is either doing manual or technical work and his salary was less than Rs. 500/- and the termination of his service does not fall in any of the excepted categories. Therefore, assuming that he was a daily rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories.....Accordingly, the termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid:'

This case was followed with approval in (1989) 2 UPLBEC 144, in which a Division Bench of this Court held that the petitioner initially appointed on daily wage basis and thereafter given ad hoc appointment and he was made to continue for years together on piecemeal appointment after giving short breaks of 2 or 3 days in a calendar year was entitled to protection of Section 6-N of the U.P. Industrial Disputes Act.

8. By any reckoning, the petitioner has completed more than one year's service, that is to say, 240 days' service in one calendar year and concededly, his case does not fall within the excepted category arid in the circumstances the Tribunal has rightly converged to the conclusions and given award of reinstating the respondent workman with full back wages for non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act.

9. As a result of the foregoing discussion, the petition falls and is dismissed.