COURT NO.2

IN THE HIGH OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.856 OF 2001 (S/S)

Rajiv Kumar S/o Late Sh. Mahesh Prasad
R/o 183 /6 Awas Vikas L.I.G. Holi Chowk,
Rudrapur (U.S. Nagar)

..... Petitioner

Versus

1. The Presiding Officer, Labour Court, Haldwani
2. Managing Director, Co-operative Federation Ltd. Lucknow
3. Pariyojana Manager Soyabeen & Banaspati Industries Complex, Haldu Chaud, District Nainital

..... Respondents

Shri S.S. Yadav, learned counsel for the petitioner.
Shri Ashish Joshi, learned counsel for the respondents.

Dated: 30.07.2005

Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioner has prayed to issue writ of Certiorari for quashing the impugned order dated 30.06.1999 passed by Respondent No.1 in Reference Case No. 117 of 1997.

2. The brief facts of the case are that the petitioner was initially appointed as Helper on daily wages on 22.08.1985 by Respondent No.3 and was discharging his duties faithfully being handicapped. On 09.10.1991, the petitioner became ill and went for medical leave. Due to his illness he was unable to render his services but an explanation was sought by the employers on 20.04.1992, which was replied by the petitioner on 06.06.1992. Meanwhile, the petitioner was again appointed on 25.02.1991 and when he went to give joining in the service, he was denied to do so and thereafter his services were terminated on 27.09.1993.

3. Feeling aggrieved by the said termination order, the industrial dispute was raised and the matter was referred to Labour Court, Haldwani under Section 4-K of the U.P.

Industrial Disputes Act, 1947 and following reference was made: -

> ***"Whether the termination of Shri Rajeev Kumar S/o Shri Mahesh Prasad by the employer is legal/or justified? If no, then what benefit/relief concerned workman is entitled for and to what extent?"***

4. After filing of reference, the Labour Court issued notices to the opposite parties and in reply to that, the parties filed their written statements. The petitioner in his written statement submitted that he was initially appointed as Helper on 22.08.1985. On 20.04.1992, the employers sought explanation, which was subsequently replied by the petitioner on 06.06.1992. Thereafter, the petitioner was again appointed on 25.02.1991 and subsequently he was terminated from service. The respondents in reply to the notices stated that the petitioner was appointed on daily wages as seasonal labour. The petitioner was used to remain absent from his duties and since 09.10.1991, he remained absent from his duties. Thereafter, it was revealed that the petitioner left the work. It was alleged that the petitioner was appointed as seasonal labour and therefore the provisions of Industrial Disputes Act were not applicable and he was not entitled for any relief.

5. The main question before the Tribunal was whether the workman worked for more that 240 days. In this regard, a witness has been produced by the petitioner-workman who deposed before the Labour Court that the petitioner was used to work for 8-9 months in a year as and when required on demand of work. The respondents-employer also produced several other documents which it reveals that the work performed by the petitioner was of regular nature and he was not seasonal employee.

6. The learned Labour Court after perusing the material available on record, held that the workman has not

worked for 240 days in any calendar year. Therefore, the learned Labour Court held that the removal of the petitioner w.e.f. 27.09.1993 was not illegal and unjustified and he was not eligible for any benefit / relief.

7. Feeling aggrieved, this writ petition has been filed. I have heard learned counsel for the parties and perused the entire material available on record. Learned counsel for the petitioner drew my attention on the judgment of Hon'ble Apex Court in the case of ***"U.P. Drugs & Pharmaceuticals Co. Ltd., Vs. Ramanuj Yadav and others {(2003)} 8 Supreme Court Cases 334}***" by which the Apex Court held that if the workman has worked for -240- days in earlier years, his services cannot be terminated and any termination of service will amount to violation of Section 6N of the Industrial Disputes Act.

8. The Apex court has categorically stated that the workman must have worked for -240- days in a year. The preceding year word is not available in the U.P. Industrial Disputes Act, therefore, if the workman has worked for -240- days by adding -52- Sundays and -17- holidays, his termination will amount to retrenchment in violation of Section 6-N of Industrial Disputes Act.

9. So far as the second point is concerned that the petitioner did not join the service for more than two years, this finding is not tenable in the eye of law. The petitioner suddenly got ill and he was on medical leave. In this regard, medical certificates have also been filed by the petitioner. For this period, he will not be entitled for wages except for the days permissible under the standing order.

10. Therefore, in view of the aforesaid pronouncement of the Hon'ble Apex Court **(Supra)**, the termination order as well as the award passed by learned Labour Court cannot be sustained in the eye of law.

11. Therefore, the writ of certiorari is issued. The order-dated 30.06.1999 passed by learned Labour Court as

well as the order of termination-dated 27.09.1993 are hereby quashed. The petitioner shall be reinstated in the service, but he shall not be paid any back wages except for the days permissible under the standing order.

12. Accordingly the writ petition is allowed. No order as to costs.

(P.C. Verma, J.)

Rajeev Dang