

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Misc. Writ Petition No. 1741 Of 2001
(Old no. 39442/1993)

Rajendra Singh Daramwall Petitioner

Versus

Nainital District Co-operative
 Bank Ltd. & others Respondents

WITH

Civil Misc. writ Petition No. 1219 of 2008
(Old no. 41986/1992)

Nainital District Co-operative
 Bank Ltd. Petitioner

Versus

Labour Court & Others. Respondents.

Hon'ble Tarun Agarwala, J.

Heard Sri K.K.Shah, the learned counsel for the bank and Sri Rakesh Thapliyal, the learned counsel for the workman. For facility, the bank is herein called 'the petitioner' and workman is called 'the respondent'.

The workman was appointed on an adhoc basis on daily wages between the years 1982-84 and thereafter it is alleged that he had worked intermittently between the years 1984-86 in the same capacity. It is contended that the workman has never completed 240 days in the calendar year. It appears that the service of the workman was dispensed with on 30th April, 1986, against which the workman raised an industrial dispute, which was referred for adjudication before the Labour Court, Haldwani. The Labour Court, after considering the material available on the record, found that the workman had worked for more than 240 days in a calendar year and that the workman was not paid the retrenchment compensation as provided under Section 6- N of

the U.P. Industrial Disputes Act. The Labour Court accordingly held that the dispensation of the services of the workman was illegal, being violative of provision of Section 6- N of the Act and consequently directed the reinstatement of the workman with continuity of service and full back wages. The employers being aggrieved by the said award, filed a writ petition no. 41986/1992(New no. 1219/2008), in which an interim order dated 12.11.1992 was passed staying the back wages only.

As a result of the interim order passed by the writ court, the workman was reinstated in service and subsequently by an order dated 23rd September, 1993, the employers again terminated the services of the workman. The workman, being aggrieved by this order, filed writ petition no. 39442/1993(New No. 1741/2001), in which an interim order dated 15.10.1993 was passed staying the effect and operation of the order of termination dated 23rd September, 1993. As a result of the interim order, the petitioner continued to work in the service with the bank. During the pendency of the writ petition, an application was moved by the workman for the regularization of his services. The employers, after considering the matter, regularized the services of the workman w.e.f.13th March, 2009. This is a situation, which exists as on date.

Having heard the learned counsel for the parties, this court is of the opinion that the writ petition filed by the bank questioning the veracity and legality of the award should not be interfered at this stage, in view of the fact that the employers have regularized the services of the workman.

Even otherwise, this court is of the opinion that the findings given by the Labour court with regard to the workman having worked for more than 240 days in a calendar year, is based on findings of fact, which cannot be interfered in a writ jurisdiction. Consequently, The award passed by Labour Court does not suffer from any error of law.

The learned counsel for the workman submitted that the employers have wrongly regularized the workman w.e.f. 13th March, 2009 and that he should be regularized w.e.f. 1985, in view of the Regularization Rules, 1985. In this regard, the learned counsel for the workman invited the attention of relief no.3 claimed by him in the writ petition. The court, upon perusing the relief claimed by him, finds that necessary averments with regard to his regularization are lacking in the writ petition. The writ petition filed by the workman is basically challenging the order of termination dated 23rd September, 1993. The court is, therefore, of the opinion that it is not possible to adjudicate on the relief no.3 claimed by the workman in his writ petition. This court further finds that the petitioner has nowhere questioned that he had wrongly been regularized w.e.f. 13.3.2009.

With regard to the payment of back wages as per the award of the Labour Court, the court finds that the Labour Court has mechanically and without any application of mind, has granted the back wages. The mere fact, that the provision of Section 6-N of the U.P.Industrial Disputes Act was not complied with, does not entitle the Labour court to grant back wages, while granting the relief of reinstatement. Something more is required to be considered by the Labour Court, namely, as to whether the workman was unemployed or not or was gainfully employed and such other factors. The Supreme Court in a large number of cases has held that the back wages should not be granted mechanically. In the case of ***General Manager Haryana Roadways Vs. Rudhan Singh*** reported in ***JT 2005(6) SC 137***, the court held that back wages should not be passed mechanically and other factors, namely, *ad hoc* appointment, short term daily wages, temporary or permanent length of service, whether the

workman is gainfully employed etc. are required to be considered.

In the light of the aforesaid, the court finds that the award passed by the Labour Court directing back wages is not correct and to that extent the award cannot be sustained. At this stage, the court could remand the matter back to the Labour Court for adjudication on this aspect but the court finds that the order of termination was passed in the year 1986. 25 years have elapsed and no fruitful purpose would be served in remitting the matter back to the Labour Court for a second round of adjudication. The matter must reach the stage of finality and should be conclusively resolved once and for all.

In the light of the aforesaid, this court is of the opinion that substantial justice would be served, if the workman is given 25 % of the back wages, pursuant to the award passed by the Labour court, Haldwani. In view of the aforesaid, writ petition no. 41986/1992(New no. 1219/2008) filed by the bank is partially allowed. The award of the Labour Court is modified to the extent that the workman is entitled to 25% of the back wages, which shall be paid by the respondent bank within one month from the date of the production of a certified copy of this order. Since the services of the workman has been regularized by an order dated 13th March, 2009, the writ petition no. 39442/1993(new no. 1741/2001) of the workman is also partially allowed to the extent that the order of termination dated 23.9.1993 is quashed. The relief with regard to the regularization as per the Rules of 1985 cannot be granted in view of the fact that necessary averments in the writ petition are lacking. It would, however, be open to the workman to move an appropriate representation before the appropriate authority praying that he should be regularized from a retrospective date. If such an application is moved, the

authority will consider and decide the same by a reasoned and speaking order within three months from the date of filing of such representation.

In view of the above, the parties shall bear their own cost.

(Tarun Agarwala, J.)

Dated: 31.3.2010

Nishant