IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) no. 1931 of 2011

State of U.P. & another ….. Petitioners

versus

Presiding Officer & another ….. Respondents

Ms. Bina Pande, Standing Counsel for the State of U.P. / petitioners.
Mr. Arvind Kumar Sharma, Advocates for respondent no. 2.

U.C. Dhyani, J. (Oral)

By means of present writ petition, the petitioners seek following reliefs, among others:

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned Award dated 01.02.2011, passed by Presiding Officer / Labour Court, Haridwar (Annexure 1 to the writ petition).

(ii) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to give effect to the impugned Award dated 01.02.2011.

2) A dispute was referred by the Sate of Uttar Pradesh for adjudication before Labour Court, Haridwar, as per the provisions of U.P. Industrial Disputes Act, 1947. Learned Labour Court was requested to adjudicate on the following point –whether the termination of the above noted workman by the employer was justified or / and legal? If not, to what relief / benefit the workman is entitled?

3) Learned Presiding Officer, Labour Court, Haridwar, vide award dated 01.02.2011 opined that the termination of the workman by the employer was illegal and the workman is entitled to get the service related benefits after the date of termination. Workman shall be treated in service throughout. However, the workman shall not be entitled to receive any back wages from the date of his termination upto the date of award. The award was answered in the positive. It was ruled that the workman will be entitled to get salary and all other allowances as admissible to him from the date of award. Aggrieved against the same, present writ petition has been preferred by the petitioners (employer).

4) The genesis of the reference may be traced from the version of the workman, according to whom, he is an unskilled labour. He worked with the employer as electrician from 01.01.1989 to 31.03.1990. He did his work with full devotion and sincerity. On 01.04.1990, the employer refused to take work from the workman and since then, he is unemployed. No enquiry was pending against him. He had already worked for more than 240 days in a calendar year or in 12 calendar months. According to the workman, the employer had not followed the provisions of Section 6(N) of the U.P. Industrial Disputes Act, 1947 (here-in-after referred to as the 'Act of 1947') and Rule 42 of the Uttar Pradesh Industrial Disputes Rules, 1957.

5) Per contra, the employer, by filing written statement / rejoinder stated that the workman worked as

casual labourer on the basis of exigency of work. He was deputed to do work with some contractor in a casual way. It was also averred that the Irrigation Department is not an 'Industry'.

6) Learned Labour Court framed following points of determination for its consideration:-

(i) Whether the Irrigation Department is an 'Industry' as defined in Section 2(J) of the Act of 1947 (Section 2(K) of Uttar Pradesh Industrial Dispute Act, 1947)?

(ii) Whether the workman had worked for 240 days in a year or in 12 calendar months?

(iii) Whether the employer has adopted the procedure as prescribed under law before terminating the services of the workman?

7) Learned Labour Court, relying upon hosts of decisions, inferred that Irrigation Department is an 'Industry' as defined in Section 2(K) of the Act of 1947.

8) This view is fortified by the decision rendered by Hon'ble Apex Court in *State of Maharashtra and another vs Sarva Shramik Sangh, Sangli and others, (2013) 16 SCC 16.*

9) This Court need not reproduce those decisions for the sake of brevity, for they already formed part of the award under challenge. Suffice will it be to say that this Court upholds the inference drawn by learned Labour Court that Irrigation Department is an 'Industry'.

10) The next point relates to the fact whether the workman had worked for 240 days in a calendar year or in 24 calendar months with the employer or not?

11) Learned Presiding Officer, Labour Court has recorded a finding in his award that from the perusal of records, it transpires that whereas the employer filed copies of Muster Rolls for the period before November 1989 and after December 1989, but the employer did not file copy of Muster Rolls pertaining to November 1989 and December 1989. No satisfactory explanation has been given by the employer for not filing the same for the above noted period despite the same being summoned by the Labour Court. On the basis of said finding it was held that the employer has deliberately not filed the copies of Muster Rolls for the above noted period for the reasons best known to him. Therefore, learned Labour Court inferred that the workman had worked for more than 240 days in a calendar year or in twelve calendar months.

12) It is the submission of learned counsel for the petitioner that work done by a workman in preceding 12 calendar months is sufficient to invoke the provisions of Section 6(N) of the Act of 1947.

13) Workman has, therefore, succeeded in setting up a case that he has completed 240 days of working in 12 calendar months and the provision of Section 6(N) of the Act of 1947 has not been complied with by the employer before terminating his services.

14) Learned Labour Court has appropriately dealt with this issue. No interference is, therefore, called for in the said issue.

15) Learned Labour Court has also adjudicated that the termination of the workman by the employer was illegal and, therefore, he is entitled to service related relief.

16) Learned Standing Counsel for the petitioner-State (employer) argued that compensation may be awarded to the workman, instead of reinstatement. In reply, learned counsel for the respondent-workman relied upon a judgment rendered by Hon'ble Apex Court in *Raj Kumar Dixit vs Vijay Kumar Gauri Shanker, (2015) 9 SCC 345*, to argue that if the retrenchment / termination of the worker is found to be illegal, then reinstatement shall follow.

17) Attention of this Court is drawn towards paragraphs no. 23, 24, 25, 26 and 27 of the judgment rendered in Raj Kumar Dixit's case (*supra*). The same are being reproduced here-in-below for convenience:

> "23. The findings and reasons recorded by the High Court in its judgment and setting aside the award of the Labour Court is contrary to the decision of this Court. Further, in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324*, this Court, after adverting to the three Judge Bench judgment of this Court in the case of *Surendra Kumar Verma vs Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443*, has categorically held that the termination order

passed by the employer is the subject matter of dispute either before the Tribunal or before the Labour Court and it is for the employer to show that the workman was gainfully employed from the date of the termination till the date of passing of the Award so as to deny him back wages and this Court further held that if the termination order is set aside, the award of reinstatement is the normal rule and awarding of the back wages must follow, the same need not be awarded if the workman is either gainfully employer during the period of adjudication or if the employer is facing any financial crunch. The said decision of this Court in the Deepali Gundu Surwase's case reads thus:

> "24. Another three-Judge Bench considered the same issue in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court and observed:
>
> "6 …..Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige or discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be

caused to the workman if the relief if denied than to the employer if the relief is granted."

24. The contention urged on behalf of the respondent-firm that the Award of compensation of Rs. 2 Lakhs in lieu of the reinstatement and 50% back wages by the High Court is on account of the alleged closure of the respondent establishment is neither supported by any pleading nor any evidence has been adduced before the Labour Court or this Court in that regard by the respondent-establishment. If any additional material is produced before the High Court, the same would be impermissible in law for the reason that the respondent-employer was required to plead with regard to the alleged closure and substantial evidence must be produced in support of the same before the Labour Court at the first instance, and no such plea has been taken before the Labour Court by them. In absence of such a plea, producing additional documents by the respondent-establishment before the High Court is totally impermissible in law for the reason that the High Court jurisdiction is to examine the correctness of the Award passed by the Labour Court in exercise of its judicial review power under Article 227 of the Constitution of India which is very limited.

25. In the present case, even if we consider the facts, there is no additional material evidence produced on record before the High Court and it has no jurisdiction to receive the same and render its findings. Apart from the said reason no other reason has been assigned by the High Court in its judgment and order for modifying the Award passed by the Labour Court. Therefore, the legal contention urged in this regard on behalf of the respondent-establishment is misconceived and the same is liable to be rejected.

26. The High Court has erred in its decision, both on facts and in law in setting aside the order of reinstatement with 50% back wages to the workman. It is the workman who was aggrieved with regard to the non-awarding of 50% back wages and this aspect of the matter has not been considered by the High Court while interfering with the Award of the Labour Court and awarding compensation in lieu of the reinstatement and back wages. Therefore, the appeal must succeed in this case. The High Court, in awarding compensation to the workman has erroneously held that the order of reinstatement passed in favour of the appellant-workman is illegal and *void ab initio* in law without assigning valid and cogent reasons and therefore, the same is liable to be set aside as there has been a miscarriage of justice.

27. The grounds urged by the appellant in this case are well founded and we accordingly pass the following order:

> 27.1 The Appeal is allowed. The impugned judgment and order passed by the High Court of Judicature at Allahabad in Writ Petition No. 19573 of 2010 dated 02.07.2014 is hereby set aside and the Award passed by the Labour Court in awarding reinstatement with 50% back wages from the date of termination till the date of passing the Award by the Labour Court is restored.
>
> 27.2 We further direct the respondent-firm to pay full back wages to the workman from the date of passing of the Award by the Labour Court till the date of his reinstatement in service. The order shall be complied with by the respondent-firm within six weeks from the date of receipt of copy of this order."

18) The same view has been taken by Hon'ble Apex Court in *Raj Kumar vs Director of Education, (2016) 6 SCC 541*.

19) Learned Standing Counsel for the petitioner-State (employer) further submitted that the workman left the job on his own. He was not ousted by the employer. Learned Standing Counsel also submitted that there was delay on the part of the workman in raising the industrial dispute, which delay is answered in the decision rendered by Hon'ble Supreme Court in *Ajaib Singh vs Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. and another, (1996) 6 SCC 82,* wherein it has been held that employer's plea of delay in seeking reference, unless coupled with proof of real prejudice to him, is not sufficient to deny relief to the workmen. In *Gurmail Singh vs Principal, Govt. College of Education and others, (2000) 9 SCC 496*, Hon'ble Apex Court has held that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.

20) This Court, therefore, does not find any infirmity in the award under challenge given by learned Labour Court. Writ petition, therefore, fails and is dismissed.

(U.C. Dhyani, J.)

Dt. July 31, 2017
Negi