

(2002) 02 AHC CK 0032

Allahabad High Court

Case No: Special Appeal No. 1365 of 1999

Chiraunji Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Feb. 6, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 2

Citation: (2002) 2 AWC 946 : (2002) 93 FLR 206 : (2002) 3 LLJ 15

Hon'ble Judges: S.K. Sen, C.J; R.K. Agrawal, J

Bench: Division Bench

Advocate: B.K. Narayan, for the Appellant; S.C. and Manish Goyal, for the Respondent

Final Decision: Allowed

Judgement

S.K. Sen, C.J.

We have heard Sri B.K. Narayan, learned counsel for the appellant and Sri Manish Goyal, learned counsel appearing for the respondents.

2. This special appeal is directed against the order dated 22nd July, 1999, passed by the learned single Judge in Civil Misc. Writ Petition No. 21562 of 1991, whereby the learned single Judge dismissed the writ petition only on the ground of availability of alternative remedy under the U.P. Industrial Disputes Act.

3. Short facts involved in the writ petition as also in the special appeal, inter-alia, are that the writ petitioner-appellant was originally appointed as apprentice clerk on 8th January, 1986 and was working as daily wager since 10th January, 1987 in Nagar Nigam, Aligarh. In view of the Government order dated 25th October, 1989, which provides that on cut off date, i.e., 11th October, 1989, if the daily wager has worked for 240 days continuously for three years, such daily wager is entitled for the benefit of regularisation. Accordingly, the writ petitioner-appellant claims that since he has

continuously worked for 240 days in each of the 3 years, i.e., 1987, 1988 and 1989 as daily wage employee, by virtue of the Government order dated 25th October, 1989, he is entitled to the benefit of regularisation.

4. The learned counsel for the writ petitioner-appellant has submitted that the writ petition seeking regularisation of his service was filed by the petitioner before this Court on 25th July, 1991, which was entertained on 29th July, 1991. This Court was pleased to direct issue of notice to the President, Nagar Palika, Aligarh fixing 4th September, 1991. The writ petition remained pending for a period of about eight years. Vide the impugned judgment and order dated 22nd July, 1999, the learned single Judge had dismissed the writ petition on the ground of availability of alternative remedy. According to him, the learned single Judge was not justified in dismissing the writ petition on the ground of availability of alternative remedy, when the writ petition remained pending before this Court for eight long years. In support thereof, the learned counsel for the writ petitioner-appellant relied upon the decision of the Hon'ble Supreme Court in the case of L. Hirday Narain Vs. Income Tax Officer, Bareilly.

5. Sri Narayan further submitted that leaving aside the period during which the petitioner had worked as apprentice and taking into account only three years, i.e.. 1987. 1988 and 1989, the writ petitioner-appellant has continuously worked for 240 days in each of the 3 consecutive years and is accordingly entitled to the benefit of the regularisation under the said Government order.

6. So far as the question of relegating the writ petitioner-appellant to the alternative remedy available under the U.P. Industrial Disputes Act is concerned, we find that the writ petition was filed in the year 1991 and remained pending before this Court for eight years and, therefore, it would not be in the Interest of justice to throw out the petition on the ground of availability of alternative remedy. In the case of L. Hirday Narain, supra, the Hon'ble Supreme Court has held as follows :

"12. An order u/s 35 of the Income Tax Act is not appealable. It is true that a petition to revise the order could be moved before the Commissioner of Income tax. But Hirday Narain moved a petition in the High Court of Allahabad and the High Court entertained that petition. If the High Court had not entertained his petition, Hirday Narain could have moved the Commissioner in revision, because as the date on which the petition was moved the period prescribed by Section 33A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income Tax Officer u/s 35. but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits."

7. The above principles laid down by the Hon'ble Supreme Court are fully applicable in the present case. Moreover, no disputed questions of fact are involved in the present case and only interpretation of the Government order is to be made. Thus,

we are of the considered opinion that the learned single Judge was not Justified in dismissing the writ petition on the ground of availability of alternative remedy and ought to have decided it on merits.

8. Coming on the merits, we find that admittedly the writ petitioner-appellant had worked continuously for 240 days in three consecutive years, namely, 1987, 1988 and 1989 and is thus entitled for the benefit of the Government order dated 25th October, 1989.

9. The said Government order, in our view, is in conformity with Section 2 (g) of the Uttar Pradesh Industrial Disputes Act, 1947, which provides as follows :

"(g) "Continuous service" means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry."

10. Sri Manish Goyal, learned counsel appearing for the respondents has submitted before us that on cut off date i.e. 11th October, 1989, the writ petitioner-appellant did not complete three years continuous service and as such, he is not entitled to the benefit of the Government order. We cannot accept the contention of Sri Goyal with regard to the Government order. We have considered the Government order dated 25th October, 1989, carefully and find that 240 days continuous service in each of the 3 consecutive years shall be sufficient for the purposes of entitling the writ petitioner-appellant to get the benefit of the Government order. The Government order does not really require completion of 3 years service, as we have already indicated that the Government order is in consonance with Section 2 (g) of the U.P. Industrial Disputes Act. The requirements of both Section 2 (g) as also the Government order appear to us that the completion of work for a period of 240 days in each of the 3 consecutive years, shall be sufficient for being entitled for regularisation.

11. In that view of the matter, we direct the respondent-authority to consider the case of regularisation of the writ petitioner-appellant forthwith and to take appropriate decision in accordance with law within four weeks from the date of communication of this order. Since the writ petitioner-appellant has not worked after 31.7.1991, he shall not be entitled for salary and other emoluments during the period in which he had remained out of job.

12. With the aforesaid observations, both the special appeal and the writ petition are allowed and the order dated 22nd July, 1999, passed by the learned single Judge is set aside. However, the parties shall bear their own costs.