(1994) 04 AHC CK 0031

Allahabad High Court

Case No: C.M.W.P. No. 5643 of 1994

Luxmi Raj Singh and Another		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: April 19, 1994

Acts Referred:

- Constitution of India, 1950 - Article 254, 254(1)
- Industrial Disputes (Amendment) Act, 1984 - Section 2
- Industrial Disputes Act, 1947 - Section 2
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 6N

Citation: (1994) AWC 1288 : (1995) 1 LLJ 262

Hon'ble Judges: S.R. Singh, J

Bench: Single Bench

Advocate: B.P. Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

S.R. Singh, J.

Petitioners Laxmi Raj Singh and Anil Kumar were appointed as Enumerators vide appointment order dated September 1, 1989(Annexure-1 to the writ petition). The appointment order was issued pursuant to recommendation made by the Selection Committee constituted for the purpose. The appointment, however, was made temporarily for a fixed period of 8 months and on a consolidated pay of Rs. 1,200/- per month. Pursuant to the said appointment order, the petitioners joined their duties as Enumerators w.e.f. September 6, 1980. It appears that, although the petitioners were appointed for a period of 8 months, but their appointments were extended from time to time and they worked and discharged their duties till July, 1990, whereafter they were prevented from signing the attendance register and were thus retrenched. It is alleged in paragraph 9 of the writ petition that the work carried out by the opposite parties is in the nature of business and trade and as

such the respondent, department/establishment, in which the petitioners were employed, is an "industry" within the meaning of Section 2(k) of the U.P. Industrial Disputes Act, 1947. The petitioners, it is alleged in the writ petition, are workmen within the meaning of Section 2 (a) of the Act and the action on the part of the respondents in preventing the petitioners from discharging their duties after July 31, 1986, it is further alleged, amounts to retrenchment and the same having not been done in the manner prescribed by Section 6-N of the U.P. Industrial Disputes Act, 1947 is vitiated by error of law and the petitioners, it is submitted by their learned counsel, are entitled to be reinstated.

2. I have heard Sri B.P. Srivastava, learned counsel for the petitioners, at some length.

3. It is evident from a perusal of the appointment order that the petitioners were appointed for a specified period of time and the appointment was purely temporary. In Director, Institute of Management Development, U.P. v. Smt. Pushpa Srivastava (1993 II LLJ 190)(SC) it has been ruled by the Supreme Court that where the appointment is contractual and by efflux of time it comes to an end and the appointee can have no right to continue in the post. In answer to the question as to whether the continuance of service of such an appointee from time to time on ''ad hoc'' basis for more than a year entitles him to claim regularisation, the Supreme Court held that since the appointment was purely on ad hoc and contractual basis for a limited period therefore, by expiry of the stipulated period, the right to remain in the post came to an end.

4. In the instant case admittedly the appointment was initially limited for a period of 8 months and it appears that it was extended upto July 31, 1990, whereafter the petitioners ceased to be in employment of the respondents and in view of the law laid down by the Supreme Court in the aforesaid case, the petitioners are not entitled to be treated in regular service.

5. So far as the questions of petitioners'' services having been terminated in breach of Section 6-N of the U.P. Industrial Disputes Act, 1947 is concerned, it may be observed that the Standing Counsel, though afforded opportunity to file counter-affidavit vide order dated February 17, 1994, has not filed any counter-affidavit and in absence of the counter-affidavit it cannot be decisively said that the petitioners are workmen within the meaning of Section 2 (z) of the U.P. Industrial Disputes Act. But assuming that they are workmen within the meaning of the said Act, termination of their services by efflux of time in terms of the appointment order itself would not amount to ''retrenchment''. It is true that the term ''retrenchment'' as defined in Section 2(s) of the U.P. Industrial Disputes Act is of wide amplitude and import and it does comprehend even an automatic termination of service by efflux of time in terms of the appointment order, But the definition of the term ''retrenchment'' as given in Section 2(oo) of the Industrial Disputes Apt, 1947 (Central) as amended by Industrial Disputes (Amendment) Act No. 49 of 1984 by

insertion of Clause (bb) in Clause (oo) of Section 2 excludes termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or such contract being terminated under a stipulation in that behalf contained therein from the purview of ''retrenchment''.

6. It is evident from Clause (bb) as inserted in Clause (oo) of Section 2 by Act No. 49 of 1984 that the termination of services of the petitioners which occurred as a result of non-renewal of contract of employment, would not amount to ''retrenchment'', so as to attract the provisions of Section 6-N or any other provision of the U.P. Industrial Disputes Act.

7. The definition of ''retrenchment'' as given in the Central Act as it stands amended by the Act No. 49 of 1984 would, in my opinion, prevail over the definition of the term ''retrenchment'' as given in Section 2 (s) of the U.P. Industrial Disputes Act, 1947 by virtue of Article 254 of the Constitution of India inasmuch as the definition of ''retrenchment'' as given in Section 2 (s) of the U.P, Industrial Disputes Act, 1947 has now become repugnant to the definition of the term as given in Central Act in view of its amendment by virtue of Act No. 49 of 1984 and therefore to the extent of repugnancy, the Central Legislation would prevail over the State Legislation by virtue of Article 254(1) of the Constitution.

8. The decision in Writ Petition No. 7379 of 1990 Pradeep Kumar Bajpai v. Commissioner/ Director of industries and Writ Petition No. 25613 of 1990, Mohd. Arshad Khan and Ors. v. State of U.P. and Ors., decided on November 11, 1992 and January 21, 1994 respectively, reliance on which has been placed by the learned counsel for the petitioners, are of no avail. It is evident that the decision in Pradeep Kumar Bajpai''s case (supra) was rendered on altogether different footings while the decision in case of Mohd. ARshad Khan and others (supra) though rendered in matter identical and similar to the one involved in the present writ petition, is not quotable as judicial precedent in view of the fact that the attention of the court was not invited either to the law laid down by the Supreme Court in Director, Institute of Management Development, U.P. v. Smt. Pushpa Srivastava (supra) or to the provisions of the Act No. 49 of 1984, whereby the term ''retrenchment'' as defined in Section 2(oo) of the Industrial Disputes Act has been so amended as to exclude from its purview the termination of service of a workman as a result of non- renewal of the contract of employment on expiry of its term.

9. In view of the above discussion the petitioners are entitled neither to the relief of mandamus commanding the respondents to allow them (petitioners) to continue work and discharge their duties on the posts of Enumerator with all consequential benefits nor to the relief of quashing the order of retrenchment/termination.

10. The Court accordingly declines to issue the writs prayed for, but having regard to the relief granted by Brother N.L. Ganguli, J. in identical writ petition vide judgment

and order dated January 21, 1994 (Annexure-6 to the writ petition), the writ petition is being disposed of with an observation that if the judgment and order dated January 21, 1994 passed in Writ Petition No. 25613 of 1990 Mohd. Arshad Khan and Ors. v. State of U.P. and Ors. has become final, the respondents may, in their discretion, give the same benefit to the petitioners which may be given or may have been given to Arshad Khan and others pursuant to judgment and order dated January 21, 1994 passed in Writ Petition No. 25613 of 1990.