(2000) 09 AHC CK 0063

Allahabad High Court (Lucknow Bench)

Case No: C.M.W.P. No. 5214 (S/S) of 1987

Sitapur Eye Hospital, Faizabad and another		APPELLANT
	Vs	
Industrial Tribunal (II) U.P. and another		RESPONDENT

Date of Decision: Sept. 25, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 25F, 6N

Citation: (2001) 1 AWC 156 : (2001) 89 FLR 118 : (2001) 2 LLJ 125

Hon'ble Judges: Bhanwar Singh, J

Bench: Single Bench

Advocate: Prashant Chandra, for the Appellant; C.S.C., S.K. Srivastava and Km. Sujata Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

Bhanwar Singh, J.

This petition has been filed for a writ of certiorari to quash the award dated 11.6.1987 (hereinafter referred to as the award) passed by the Industrial Tribunal (II) U. P., Lucknow.

2. The petitioner''s case is that Sitapur Eye Hospital, Faizabad, is a charitable eye hospital, which is a branch of the Base Hospital at Sitapur. It is run by a society known as Faizabad District Eye Relief Society, Faizabad. The opposite party No. 2 Mohammad Salim Ansari was a ward-boy working in a temporary capacity in the petitioners'' hospital. He was appointed with effect from 1.4.1983. However, his services were terminated vide order dated 21.1.1984 by the Medical Officer Incharge Eye Hospital, Faizabad and in lieu of one month''s notice, he was paid one month''s salary. Mr. Ansari raised an industrial dispute, which was referred to the Tribunal.

The petitioners and Mr. Mohammad Salim Ansari filed their written statements. As Mr. Ansari did not complete his service for one year, provisions of Section 6N of the U. P. Industrial Disputes Act were not attracted. He was not entitled to claim retrenchment compensation for he had not completed one year''s service. However, the Tribunal held that the opposite party No. 2 was entitled to claim retrenchment compensation as well and since the petitioners failed to do so, Mr. Ansari was entitled to be reinstated to his post. As a matter of fact. Mr. Ansari opened his own chemist shop just behind the petitioners'' hospital by the name of Sunaina Medical Store and since he was running a profitable business, he was not entitled to any compensation from the petitioners. The petitioners, however, expressed their willingness to pay the retrenchment compensation but assailed the award on the count of reinstatement.

3. Mr. Ansari filed his counter-affidavit and protected the award in his favour. The petitioners were covered by the Industrial Disputes Act. From the petitioners'' own record, it was established that he was recruited as ward boy with effect from December 1, 1971 and from 1st October, 1982 to 20th January, 1984, he worked continuously without any break and got his wages. Thus, he had completed more than 240 days in a year and he was. therefore, entitled for the protection of Section 25F of the Industrial Disputes Act and Section 6N of the U. P. Industrial Disputes Act. His termination being contrary to the provisions of the said Act was illegal. As a matter of fact, he was given a charge-sheet on January 14, 1984 but no enquiry was done. Since his termination was made without following the principles of natural justice and completing the enquiry, the Industrial Tribunal rightly set aside the order of termination. In fact he was victimised by the officers of the petitioners and his termination was the result of prolonged victimisation. Further, Mr. Ansari denied the petitioners'' allegation that he was running a chemist shop and earning huge profits. As pleaded by him, he was sitting idle at home with no income from any source of livelihood. In these circumstances, the petitioners'' services were rightly restored by virtue of the impugned order.

4. The main ground pressed into service on behalf of the petitioners is that the provisions of Section 6N of the U. P. Industrial Disputes Act were not attracted, as the opposite party No. 2 had not completed the tenure of his service for one year. It was supplemented further that the Industrial Tribunal, in case of having-found that it was necessary to hold an enquiry, should have given an opportunity to the petitioners to lead evidence for proving the charge.

5. I have heard the learned counsel for both the parties and perused the record.

6. As recited above, the main thrust has been advanced on the technical ground that the opposite party No. 2 was not entitled to the provisions of Section 6N of the U. P. Industrial Disputes Act. According to the petitioners, Mohammad Salim Ansari was employed as a ward boy for a period of less than ten months in the hospital. It was mentioned in the written statement of the petitioners filed before the Industrial

Tribunal that Sri Ansari was allowed to join on 1.4.1983 and since he was terminated with effect from 21.1.1984, he failed to complete one year of term in service and, therefore, he was not competent to derive any advantage of the provisions of Section referred to above. However, this allegation was disputed by Mohammad Salim Ansari. According to him; he was in the service of the petitioners as a seasonal ward boy from December, 1971 to January, 1984. He was appointed as temporary ward boy with effect from October, 1982 and he worked upto 20.1.1984. Obviously thus he was in the employment of the petitioners for nearly fifteen months and since during this period, he served for more than 240 days, he was fully competent to take recourse of the provisions of Section 6N of the U. P. Industrial Disputes Act.

7. It is significant to note that one Sri Ramji Gupta was examined on behalf of the petitioners before the Industrial Tribunal. His statement is Annexure-C2 on record, a perusal of which would reveal that he admitted in his cross-examination that Sri Ansari was in regular service with effect from October, 1982 to January 20, 1984. He conceded further that during this period, he continuously worked throughout the year. In view of this admission, a clear-cut finding can be recorded that Sri Ansari worked for more than a year in the hospital of the petitioners and he was on duty for a period exceeding 240 days. This conclusion is certainly bound to attract the provisions of Section 6N of the U. P. Industrial Disputes Act, which postulates as follows :

"6N. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month''s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days'' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government."

8. It is admitted to the petitioners that Sri Ansari was neither served with one month''s notice nor any compensation equivalent to fifteen days average pay was paid to him at the time of his retrenchment. No doubt, he was offered one month''s wages in lieu of the requisite notice but since his termination was in violation of the principles of natural justice, he was justified in declining the said offer. The learned counsel for the petitioners relying upon the citations, Triveni Shankar Saxena u. State of U. P. and others 1992 (1) SCC 524 and State of Uttar Pradesh and Another

Vs. Kaushal Kishore Shukla, , contended that the opposite party No. 2 could not stake his claim on the post he was holding as he was working on temporary basis. It is note-worthy that in neither of the two citations, the facts were similar to those of the case in hand. In the first citation, the U. P. Fundamental Rules were applicable as the appellant was working as a Lekhpal, however since he did not hold any Hen on the post, termination of his service as per rules on account of unsuitability on the basis of adverse entry in his character-roll was not held punitive. The other citation was also in respect of a temporary Government servant whose termination had culminated on the ground of unsuitability on assessment of the employee''s work in terms of his contract of service. The opposite party No. 2 of the case before this Court was a workman as defined under the U. P. Industrial Disputes Act, 1947 and since he fulfilled the requirement of the provisions of Section quoted above, his services could not be terminated without following the said provisions. Since no notice in the prescribed manner regarding retrenchment of Sri Ansari was served, his termination was absolutely invalid.

9. Besides the legal lacuna, as referred to above earlier subsisting in the termination of the opposite party No. 2. the cessation of his service was also illegal as principles of natural Justice were not followed. It was admitted to the petitioners that Sri Ansari was served with a charge-sheet before his termination and the charge levelled against him was that he remained absent without leave from his duty with effect from 11.1.1984 to 14.1.1984 and an explanation was also called from him. In compliance, he submitted his explanation on 16.1.1984 but without holding any domestic enquiry, his service was abruptly terminated with effect from 21.1.1984. It was admitted to Sri Gupta, the witness of the petitioners that a charge-sheet was issued to the workman asking him to furnish his explanation and the latter replied denying the charge of his having remained absent. Sri Gupta also conceded that no departmental enquiry was ordered against him, instead he was terminated with effect from 21.1.1984. The workman pleaded another story in the background and submitted that he was victimised by the then Medical Officer Incharge of the Hospital because he refused to drive the ambulance carrying the Medical Officer''s wife to an educational institution. It is irrelevant for this Court to enter into the veracity of such allegations. However, it is evident from the record that the service of Sri Ansari was terminated without holding any departmental enquiry in spite of the fact that he was served with a charge-sheet containing a serious charge of his being absent without leave from duty. In this back-drop of domestic enquiry which initially might have been contemplated to be ordered by the then Medical Officer Incharge, the statement of the petitioners'' witness Sri Rarnji Gupta to the effect that Sri Ansari was present on 11.1.1984 but he was not allowed to sign the Attendance Register, acquired significant dimensions. It can well be observed out of the said averment that Sri Ansari was harassed and victimised by the Medical Officer Incharge of the Hospital and the latter''s vindictive attitude culminated in the termination of Sri Ansari''s services. Such termination was contrary to all canons of

natural justice and violative of Article 14 of the Constitution. It was a capricious order. The arbitrariness on the part of the Medical Officer Incharge clearly reflected from his stubborn attitude towards the workman as he restrained the latter from signing the Attendance Register on January 11, 1984, although he was very much present to attend to his duties. Apparently thus the impugned termination order dated 21.1.1984 was arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Accordingly I am inclined to hold that the impugned award of the Industrial Tribunal (II) U. P., Lucknow, does not suffer from any legal infirmity and there subsists no force for its being interfered with.

10. The learned counsel for the petitioners challenged the latter part of the award whereby Sri Ansari was granted benefit regarding payment of back wages on the ground that Sri Ansari was engaged in a profitable business of running a medical store during the period he remained out of job. In this context, it may be mentioned, at the first instance, that the petitioners failed to establish that Sri Ansari was running the Sunaina Medical Store, as no documentary piece of evidence worth the name credit to support their contention was brought forth. Secondly, it is a settled law that if a workman has been deprived of his service by the employer in violation of the mandatory requirements of the U. P. Industrial Disputes Act, it should be deemed that his service was never terminated and certainly on that rationale, he would be entitled to get his back wages. The said view is fortified by a decision, Ashok Kumar and Others Vs. Managing Director, U.P. Leather Development and Marketing Corporation and Others, . The following observation in para 27 of the judgment may relevantly be quoted :

"..... It is apparent that an order dispensing with the services of workman purporting to terminate the relationship of master and servant taking recourse to a retrenchment which is rendered ab inifio void on account of the non-compliance of the mandatory requirements contemplated under the provisions of the U. P. Industrial Disputes Act has to be taken as ab initio void and the workman concerned has to be taken to be continuing in service/employment in spite of the order terminating his service and it should be deemed that his service was never terminated. If an order is null and void, it has no existence in the eyes of law. It is non-est."

In the succeeding para 28, it was held further that there can be a straight Jacket formula for awarding relief of back wages and the party objecting to it must establish the circumstance necessitating departure. As held above, the petitioners could not succeed in establishing their allegations that Sri Ansari was running a medical store during the course of his idleness. Their contention, therefore, to quash the award of back wages is devoid of merit.

11. In view of what has been discussed above, I am of the opinion that this petition has no merit and, therefore, deserves to be dismissed.

12. Accordingly, the writ petition is dismissed with costs.