(2007) 11 AHC CK 0124

Allahabad High Court

Case No: None

Junior Engineer, U.P. Jal Nigam, Construction Division		APPELLANT
	Vs	
Presiding Officer, Labour Court and Purshottam		RESPONDENT

Date of Decision: Nov. 22, 2007

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 6N

Citation: (2008) 2 AWC 2127 : (2008) 116 FLR 558

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Judgement

Rakesh Tiwari, J.
Heard counsel for the petitioner and the respondents as well as learned Standing Counsel.

2. U.P. Jal Nigam is a body corporate established under the provisions of U.P. water Supply and Sewerage Act, 1975. The main function of the U.P. Jal Nigam is to execute projects under various schemes in regard to water supply and sewerage, sponsored by State Government of any other local body or institution. After completion of the schemes the projects are handed over to the sponsoring body. The Chairman, U.P. Jal Nigam hereinafter called to as the Nigam by order dated 20.5.1991 retrenched surplus muster roll employees engaged in the Nigam on the ground of reduction of work and stringent financial condition. According to the policy framed by the Nigam the strength of surplus muster roll employees in various divisions of the Nigam had to be rationalised by restoring to retrenchment daily wages engaged after 31.8.89 in accordance with law as a direct result of shortage of work on account of either completion of work or reduced number of projects

suffered by it due to surplus staff and availability of less funds at the relevant time in 1991.

3. Respondent No. 2 the workman concerned who was engaged as daily wager on mustor rolls on 1.4.1990 was working as Hand Pump Fitter in the office of Junior Engineer, Construction Division of U.P. Jal Nigam, Barkunwa, Mirzapur. He was not engaged thereafter with effect from 22.6.1991 by the employer alongwith other employees due to paucity of work and funds as stated earlier. He was retrenched after following the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 by giving him notice pay in due of one months and payment of retrenchment compensation etc. It appears that aggrieved by the above action of the managements of retrenchment of payment of workman, the Union of workman filed writ petition No. 18124 of 1991 UP. Jal Sansthan Mazdoor Union Mirzapur v. Chairman UP. Jal Nlgam and Ors. in which initially an interim order dated 8.7.1991 was granted by the Court. The writ petition aforesaid was dismissed vide order and judgment dated 1.7.1994. The aforesaid writ petition was dismissed by order and judgment dated 13.5.1994 as such the order of retrenchment revived. Accordingly the petitioner was again disengaged w.e.f. 1.7.1994 as a result of dismissal of the writ petition aforesaid, but was not paid any retrenchment compensation etc as provided u/s 6N. of the U.P. Industrial Disputes Act, 1947.

4. Aggrieved by his non engagement the workman raised an Industrial disputes which was registered as CP. case No. 141/95 of 2001. On conciliation proceedings having failed the following dispute regarding his termination of service w.e.f. 1.7.1994 was referred for adjudication to Labour Court, Varanasi where it was registered as adjudication case No. 139 of 1995.

D;k lsok;kstdks }kjk vius Jfed iq:"kksRre iq= ykypUn fQVj dh lsok;ssa fnukad 1-7-94 ls lekIr fd;k tkuk mfpr rFkk @ vFkok oS/kkfud gS \\ ;fn ugh rks Jfed D;k fgrykHk ikus dk vf/kdkjh gS \\

The parties filed their respective counter and rejoinder statements before the Labour Court. The case of the worker before the labour Court was that he had been appointed in the establishment of the petitioner on 1.4.90 as fitter on daily wages and worked continuously in the establishment upto 21.6.1991 but thereafter he was illegally disengaged from service with effect from 22.6.1991.

5. The case of the petitioner was that when the work of construction was over in its construction Division, the workman who were engaged as daily wager including the petitioner in the present writ petition were disengaged; that pursuant to letter dated 20.5.1991 the respondent workman was also disengaged with effect from 22.6.1991 after payment of his legal dues and retrenchment compensation and one month wages in lieu of notice as provided u/s 6N of the Industrial Disputes Act; that reference by the State Government was illegal and bad in law as real dispute was not referred rather an assumed cause of action of termination w.e.f. 1.7.1994 was

referred for adjudication whereas the respondent had in fact been disengaged on 22.6.1991 due to reasons beyond the control of the employer and he was allowed to rejoin only in pursuance of the interim order in writ petition No. 18124 of 1991 in which retrenchment of daily wagers was challenged by the Union of workers. The writ petition having been dismissed and as consequence of whereof his service came to an end did not change the fact that the workman worked stood relieved on 26.6.1991 and not on 1.7.1994 as a result of the dismissing of the writ petition aforesaid. The employer also submitted documentary evidence in support of their case in the proceedings before the labour court. The workman given his oral evidence on 23.7.1997 and Sri R.S. Chaubey one of the witnesses of the employer gave his evidence on 19.12.1997 on their behalf.

6. The Labour Court by its award dated 9.1.1998 decided the reference against the employers holding that retrenchment of the service of the workman w.e.f. 22.6.1991 was in valid. Relevant extract of the award for the purpose of decision is as under:

Jfed us tks dkxtkr izLrqr fd;s gS mlesa vf/k''kklh vfHk;ark dk 19-08-96 dk izek.k i= gS fd mlus 1-4-90 ls 22-6-91 rd yxkrkj dke fd;k A ek0 mPp U;k;ky; ds vkns''k rFkk fjV ;kfpdk la0 18124 @ 1991 dh izfr Hkh nkf[ky dh xbZ gS A blds foijhr lsok;kstd ds rjQ ls fdlh jkepUnziqj csynkj ds Hkqxrku ls lacaf/kr dkxtkr nkf[ky fd;s x;s gS A dksbZ vU; dkxtkr ugh nkf[ky fd;s A

blds ckn Jfed dk c;ku 23-7-97 dks gqvk A vxyh rkjh[k izfrfuf/k us viuk vf/kdkj i= okil ys fy;k A 23-9-97 dks v/kh{k.k vfHk;Urk ty fuxe ehjtkiqj dks i= fy[kk x;k fd fuekZ.k ''kk[kk ds eqdneksa esa os iSjoh djkos A blds ckn fuekZ.k ''kk[kk dh rjQ ls Jh vkj0,l0 pkScs dk c;ku 19-12-97 dks gqvk A Jh pkScs 8-3-93 ls bl ''kk[kk esa fu;ksftr gS A vr% 22-6-91 dh uksfVl vkfn ds ckjs esa mUgs dksbZ tkudkjh ugh gS A buds c;ku ds ckn lsok;kstd us ,d vkSj xokg izLrqr djus dk le; ekaxk ijUrq mudk ;g vuqjks/k vLohdkj fd;k x;k D;ksfd igys gh dkQh le; fn;k tk pqdk Fkk A

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lsok;kstd izfrfuf/k us 1997 ,y ,y vkj 889 esa ek0 mPpre U;k;ky; dh O;oLFkk dk gokyk fn;k fd ;fn dksbZ nSfud osru Hkksxh deZpkjh fdlh ifj;kstuk esa dk;Zjr gS vkSj ifj;kstuk can dj nh tkrh gS rks mls nSfud osru ij iqu% fu;qDr djus dk dksbZ iz''u gh ugh mBrk A Jh pkScs dk tks c;ku gqvk gS mles mUgksus Lohdkj fd;k gS fd fuekZ.k ''kk[kk ds lHkh fu;fer vkSj nSfud osru Hkksxh deZpkjh dgh u dgh LFkkukUrfjr dj fn;s x;s A KkrO; gS fd Jfed vius dks gS.M iEi yxkus dk dke djus esa fQVj in ij fu;qDr gqvk gS A dgrk gS A lHkh tuinksa esa gS.M iEi yxkus dk dke vHkh py jgk gS A fuekZ.k ''kk[kk dks gh can dj nh xbZ gks ysfdu Jh pkScs ds c;ku ls Li"V gS fd bl foHkkx ds lHkh deZpkjh fdlh u fdlh izfr"Bku esa Hkst fn;s x;s A

KkrO; gS fd i;kZIr volj nsus ij Hkh lsok;sktd dh rjQ ls bl vk''k; dk dksbZ izek.k ugh vk;k fd Jfed dks m0iz0 vkS|ksfxd fookn vf/kfu;e dh /kkjk 6 ,u ds vuqikyu esa dksbZ uksfVl nh xbZ ;k ugh rFkk dksbZ Hkqxrku fd;k x;k ;k ugha A mudk dguk gS fd Jfed us Loa; tks ;kfpdk izLrqr dh Fkh mlesa ;g ;kfpdk ;wfu;u }kjk nk;j fd;k x;k Fkk vkSj mlesa Jfed i{k

Hkh Fkk A ;g rdZ fn;k x;k fd ;kfpdk dh /kkjk 11 esa Jfed us Lohdkj fd;k gS fd mUgs uksfVl fn;k x;k Fkk A ,slh dksbZ Lohdkjksfpr ugh gS A /kkjk 11 es ftl izk:i ij NaVuh dk vkns''k tkjh gqvk Fkk mls layXud 6 ds :i es nkf[ky fd;k x;k gS A lacaf/kr Jfed dsk tks uksfVl nh x;h Fkh mlesa mlds izkfIr dk dksbZ izek.k izLrqr ugh fd;k x;k bu ifjfLFkfr;ksa es ;g lsok;kstd dk mRrj nkf;Ro Fkk fd ;g izekf.kr djrs fd Jfed dks fof/kor uksfVl nh xbZ Fkh ftls izekf.kr djus esa os iw.kZr% vlQy jgk gS A

lsok;kstd izfrfuf/k dk rdZ gS fd okLro esa Jfed dh lsok;sa 22-6-91 lekIr dh x;h ijUrq lanHkZ 1-7-94 dh lsok lekfIr ds ckjs esa gS A okLro esa Jfed us vfUre :i ls tc mldks gVk;k x;k mlh dks pqukSrh nh gS vkSj bl vkns''k esa 22-6-91 dk vkns''k varfuZfgr gS A vr% ;g ns[kk tk;sxk fd 22-6-91 dk vkns''k fof/kor Fkk ;k ugh A vr% ek= bl vk/kkj ij Jfed ds dsl dks fujLr ugh fd;k tk ldrk A

bl izdkj ;g Li"V gS fd 22-6-91 dks Jfed dh lsok;sa voS/kkfud ax ls lekIr dh x;h A mls dksbZ uksfVl dksbZ NaVuh eqvkotk ugh fn;k x;k A vkSj i;kZIr volj nsus ij Hkh lsok;kstd dh rjQ ls dksbZ lk{; ugh fn;k x;k A

vr% ;g vfHkfu.khZr fd;k tkrk gS fd Jfed dh lsok;sa voS/kkfud ax ls lekIr dh xbZ A og cgkyh ds ;ksX; gS lsok es mldh fujUrjrk cuh jgsxh vkSj og iwjh cSBd vof/k dk osru ik;sxk A

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The aforesaid award impugned in the writ petition is assailed on the ground that according to the order of reference termination of the services of the workman w.e.f. 22.6.1991 was never in issue ; that the labour court has exceeded its jurisdiction and has given the award beyond the scope of reference ; that it is perverse and against the material on record as such is vitiated in law.

7. It is urged that the parties could lead evidence only in terms of the reference to establish the validity or invalidity in regard to the alleged termination of service of respondent No. 2 w.f.e. 1.7.194. It was not open to parties to lead evidence on any other issue beyond the matter of reference and pleadings hence neither validity of termination of service of the workman w.e.f. 22.6.1991 was in reference nor the labour court could have submitted its award holding that termination of his services from 22.6.1991 were wrongful. It is submitted that the respondent No. 1 therefore erred in exercise of its jurisdiction in overlooking this legal aspect of the matter as the workman admittedly was engaged on daily wages hence no direction for his reinstatement with continuity of service and full back wages could be awarded by the labour court. It is also urged that the labour court also erred in law in drawing erroneous inferences and illegal presumption not warranted by law and evidence on record as such its findings are perverse. It is stated that in fact, the workman had been given notice pay as per Annexure No. 1 to the wreit petition and was also

tendered the amount of retrenchment compensation and one month''s wages in lieu of notice which on refusal of the workman was sufficient compliance of law.

8. Per contra the contention on behalf of the workman is that he was working in the maintenance being of the department as hand pump fitter, on continuous nature of work and as such the order passed by the Chairman, U.P. Jal Nigam dated 20.5.1991 disengaging all workman as surplus employee who were engaged as daily wager after 30.8.89 was arbitrary. It is stated that no notice or retrenchment compensation u/s 6N U.P. Industrial Disputes Act., Was offered to him before disengaging him from work from 1.7.1994. That writ petition No. 18124/91 was disposed of by judgment and order dated 13.5.1994 with observation that workers had an alternate remedy under the Industrial Disputes Act.

9. It is urged that in the aforesaid circumstances the workman rightly raised the industrial dispute regarding his illegal termination, on the ground that retrenchment orders dated 1.7.1994 as well as 22.6.1991 were illegal and he was entitled to be regularised in permanent service having completed 240 days of continuous service in the establishment and that it is absolutely incorrect to say that no industrial disputes existed on 1.7.1994 as such the reference was rightly made by the State Government. It is lastly submitted that award of the labour court does not suffer from any error in law or error apparent on the face of record and as termination of services of the workman w.e.f. 22.6.1991 were absolutely illegal, the award is perfectly in accordance with law holding the termination to be bad and reinstating the workman in service accordingly with normal relief of full backwages. It appears from the award that as Sri R.S. Chaubey the employer witness was appointed on 8.3.1993 and he had no personal knowledge of service on notice dated 22.6.1991 etc, which was prior to the date of his employment. The employer after producing Sri R.S. Chaube as witness on their behalf, further wanted to produce another witness before the labour court in support of their case for the purpose of proving number of days, on which the workman had actually worked in the establishment. The labour court rejected the application of the petitioner-employer on the ground that prior to producing Sri R.S. Chaube they had earlier been granted time to produce the witness.

10. It appears that the labour court denied the employers request to produce yet another witness as it was somewhere in its sub concious mind that this would delay submission of award. Thereafter the labour court heard the arguments and submitted the award to the State Government u/s 6 of the U.P. Industrial Dispute Act. It was enforced by publication on 17.8.1998. From the award it is apparent that Labour court relied upon a certificate of the then Executive Engineer showing that the petitioner was engaged during the period from 1.4.1990 to 22.6.1991. This certificate does not show the actual number of working days of the workman in the establishment. The Labour Court has placed the burden of proof upon the employer to establish that they had given compensation and notice to the workman in

accordance with Section 6N of the U.P. Industrial Disputes Act on the presumption that the workman had continuously worked for 240 days. It is settled law that the burden of proof that the workman has put in as actual work of 240 days or more in 12 calender months as define u/s 6N read with Section 2(g) of the U.P. Industrial Disputes Act, 1947. The span of work shown in the certificate would not mean that the workman has actually work for 240 days in 12 calender months in a year.

11. As there was no other documentary material filed by the workman before the labour court regarding actual number of days of worked by him. Admittedly, the workman was employed as a daily wager for day to day work on need basis, hence he could not have been reinstated by the labour court as in the establishment with continuity of service and as this would amount to reinstatement in service as a regular employee. The daily wager is neither granted pay scale nor is appointed as permanent employee on a sanctioned post. The relief granted by the labour court, therefore is beyond this scope of reference in the backdrop of the admitted facts of this case.

12. It appears from letter dated 20.5.1991 that when surplus employee workman had been disengaged from service on 22.6.1991 he has offered retrenchment compensation and notice pay etc. Admittedly he was a daily wager and not a permanent employee. The short question involved in this case is whether he would be entitled to retrenchment compensation for the period he worked after termination of his service on 22.6.1991, on re-joining in pursuance of interim order passed by the High Court dated 8.7.1991 in writ petition No. 39334 of 1998.

13. The law in this regard is settled that no person can get vested with a legal right under any interim order i.e. his case has to stand on basis of its own rights. The services of the petitioner appears to have been lawfully terminated on 22.6.1991. Regard may also had to para of the counter affidavit as under:

para 14 that the case set up by the respondent No. 2 in written statement before the Labour Court was that since 1.4.1990 he was working in the establishment of petitioner and he was retrenched from service on 22.6.1991. He filed a writ petition against retrenchment and obtained stay order and he rejoined the work. But his writ petition was dismissed as such he was relieved from work on 1.7.1994. Ata the time of relieving from work he was not given notice and compensation as such Section 6-N was not followed.

From perusal it appears that contention of the respondent workman is that he is silent on the specific amount made by the employer regarding termination of service after payment in lieu of notice and retrenchment compensation. Rather it appears that his stand is that he has not been paid retrenchment compensation etc in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 when he was discontinued again after dismissal of the writ petition.

14. There appears to be no discrimination against the petitioner as he was disengaged alongwith other similar situated daily wages. A workman can never be in a position to draw any inference whether there is over staffing daily wager as he is never in a position to know being in inferior position and not involved in policy taking decisions of the Management. The workman has also not been able to show any rule applicable to the establishment which provides that on completion of 240 days or more of continuous service a daily wager would become a regular employee of the establishment even though a sanctioned and vacant posts may not be available and to the effect that even if such post is available whether according to the rules sit is to be filled by daily wager or recruitment process in accordance with Rules for this purpose. To my mind the labour court could not have held the workman entitled to reinstatement with full back wages and continuing of service w.e.f. 22.6.1991 as he was a daily wager and not a permanent employee. In Executive Engineer, Construction Division, U.P. Jal Nigam Vs. Presiding Officer Authority, Labour Court and Dina Nath Mishra, In that case the workman were engaged as daily wager muster roll employee. There service were termianted. The Court upon considering Section 4K and 10 U.P. Indiatrial Disputes Act, 1947, Section had held that the workman cannot be granted relief of service and full back wages as this relief can only be granted to permanent employee and not to daily wage. Impugned award granting relief of reinstatement with continuity of service and full back wages was quashed.

15. The award of relief of holding the termination w.e.f. 1.7.94 was given by the labour court. In fact the date of actual termination or disengagement of the employee was 22.06.1991 and not 1.7.1991 as referred for the reason the subsequent date was of disengagement on revival of the order of disengagement dated 22.6.1991 on dismissal of the writ petition.

16. In view of the judgment Executive Engineer, Construction Division, U.P. Jal Nigam Vs. Presiding Officer Authority, Labour Court and Dina Nath Mishra, the writ petition is, therefore, allowed. The matter is remanded to the lower court to give fresh award after affording reasonable opportunity for adducing document and oral evidence to the parties for proving actual number of days of worked by the workman, considering the reference in light of the observation made above. It is however made clear that the labour court shall apply its independent mind on basis of the evidence and argument adduced before it and shall not in any manner be influenced by observations made in this judgment as they have been made only in context of the contention of the parties in the writ petition and are limited for that purpose. Parties bear their own costs.

17. Either of the parties may file certified copy of this order/judgment before the labour court within six weeks from today and shall further appear before the labour court thereafter on the date fixed till the proceedings are before the labour court.