
(1995) 09 AHC CK 0122

Allahabad High Court

Case No: C.M.W.P. No. 15386 of 1984

Dugdh Parishad
Karmchari Sangh

APPELLANT

Vs

Kanpur Sahkari Milk
Board and Others

RESPONDENT

Date of Decision: Sept. 22, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 25N, 25N(1), 6Q

Hon'ble Judges: N.B. Asthana, J; D.S. Sinha, J

Bench: Division Bench

Advocate: P.C. Jhingan, for the Appellant; S.C., G.D. Misra and Tej Ram, for the Respondent

Final Decision: Allowed

Judgement

D.S. Sinha, J.

Heard Shri P.C. Jhingan, learned Counsel for the Petitioner, Shri G.D. Mishra and Shri Tej Ram. standing counsel, representing the Respondents Nos. 1, 2 and 3 respectively.

2. Espousing the cause of 20 retrenched workmen of M/s. Kanpur Sahkari Milk Board, Nirala Nagar, Kanpur through Its General Manager, the Respondent No. 1, Identified in the list appended to the writ petition as Annexure No. 1, Dugdh Parishad Karmchari Sangh, through its President, Sri Audh Narain Tripathi, the Petitioner, has by means of this petition under Article 226 of the Constitution of India approached this Court and urged it to command the Respondent No. 1 to give opportunity to the aforesaid retrenched workmen to offer themselves for re-employment.

3. Workmen named in the list, appended to the petition as Annexure-1, were retrenched by the Respondent No. 1 after following, the due procedure prescribed

u/s 25N of the Industrial Disputes Act, 1947 (hereinafter called the Act). The permission granted to the Respondent No. 1 for retrenchment of the said workmen under Clause (b) of Sub-section (1) of Section 25N of the Act was challenged in this Court and the court upheld the permission. Therefore, the controversy about the retrenchment of the workmen sought to be agitated in this petition is not open for adjudication.

4. The claim of the petition for a writ of mandamus commanding the Respondent No. 1 to give the opportunity is well-founded, in view of the provisions contained in Section 6Q of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the U.P. Act).

5. Section 6Q of the U.P. Act reads thus:

6Q. Re-employment of retrenched workmen.--Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons.

6. Even a bare perusal of Section 6Q of the U.P. Act leaves no room for doubt that where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed give an opportunity to the retrenched workmen and such of the retrenched workmen who offer themselves for re-employment shall have preference over other persons. The requirement of giving an opportunity to the retrenched workmen to offer themselves for employment where employer proposes to take into his employ any persons is statutory and mandatory. It is also obligatory for the employer to give preference to the retrenched workmen over other persons.

7. It is conceded by the learned Counsel appearing for the petitioner as well as for the Respondent No. 1 that out of 208 retrenched workmen identified in Annexure No. 1 to the writ petition, 75 workmen were given opportunity to offer themselves for re-employment and they were in fact given employment, as required by Section 6Q of the U.P. Act, and these workmen are working with the Respondent No. 1, 75 workmen having already been employed by the Respondent No. 1, the claim for relief for them does not survive and has become infructuous.

8. Remaining retrenched workmen, mentioned in Annexure 1 to the petition, are entitled to the benefit of Section 6Q of the U.P. Act. The Respondent No. 1 is statutorily obliged to give an opportunity to them to offer themselves for re-employment, if it proposes to take into his employ any persons, and upon being given such opportunity to them and upon their offering themselves for reemployment, they shall have preference over other persons, if there is no other legal impediment.

9. In the result, the petition succeeds and is allowed. The Respondent No. 1 is commanded to give an opportunity to such retrenched workmen, mentioned in Annexure-1 to the writ petition, who have already not been given opportunity in terms of Section 6Q of the Act to offer themselves for re-employment as and when it proposes to take into its employ any persons, and if they offer themselves for re-employment, to give preference to them over other persons. There is no order as to costs.