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**(2003) 10 AHC CK 0184**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 3530 of 1985

Vinod Kumar

APPELLANT

Vs

Labour Court and Others

RESPONDENT

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**Date of Decision:** Oct. 22, 2003

**Acts Referred:**

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 4K, 6N

**Citation:** (2003) 6 AWC 5057 : (2004) 1 UPLBEC 67 : (2004) 1 UPLBEC 6

**Hon'ble Judges:** Anjani Kumar, J

**Bench:** Single Bench

**Advocate:** Shyam Narain, for the Appellant; S.M.A. Kazmi and P.K. Mukherjee and S.C., for the Respondent

**Final Decision:** Allowed

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### Judgement

Anjani Kumar, J.

The petitioner-workman aggrieved by the award of the Labour Court, Allahabad dated 15th October, 1984, passed in Adjudication Case No. 82 of 1983, approached this Court under Article 226 of the Constitution of India, copy where of is annexed as Annexure-"26" to the writ petition.

2. The Following dispute was referred to the Labour Court by the State Government on 14th September, 1983 in exercise of its powers u/s 4-K of the U.P. Industrial Disputes Act, 1947, for adjudication.

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3. The Labour Court issued notices to both the parties, namely, the employers as well as the workman concerned. The parties have exchanged their pleadings and adduced their evidence. In short, the case set up by the workman is that he was

employed by the employers on 16th September, 1980 on the post of Clerk and had continuously worked till 21st October, 1982 and his services were given only artificial breaks, as stated in Annexure-"I" to the written statement. Learned Counsel appearing on behalf of the respondent-employers Sri P.K. Mukherjee argued that the finding of the Labour Court that the workman has not worked for 240 days continuously in one calendar year, therefore, he cannot be termed as Workman is a finding of fact and therefore, the reference has rightly been answered against the workman. On the contrary, Sri Shyam Narayan, learned Counsel appearing on behalf of the workman has relied upon the following decisions reported in 1997 (75) FLR 47, British India Corporation Ltd. Cawnpore Woollen Mills Branch, Kanpur v. The Labour Court-II, U.P., Kanpur and Ors. 1989 Lab I.C. 1914; Bharat Heavy Electricals Ltd., Baroda v. R.V. Krishnarao, which say that the amendment brought in Industrial Disputes Act, 1947 (Central) in 1984 is prospective and not retrospective. Further learned Counsel for the petitioner-workman has relied upon the decisions reported in 1994 (69) FLR 288 , [Prathma Bank Vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur and Another, , U.P. State Electricity Board and Another Vs. Presiding Officer, Labour Court and Another,](#) U.P. State Electricity Board and. Anr. v. Presiding Officer, Labour Court, Varanasi and Anr.; (1991) 2 UPLBEC 1267, U.P. Bank Employees Union, Fatehpur Unit, Fatehpur and Ors. v. District Co-operative Bank Ltd., Fatehpur and Ors.; 1996 (72) FLR 554, Punjab State Seeds Corporation v. Labour Court, Jalandhar and Anr.; 1986 Lab I.C. 251, Arun Kumar v. Union of India and Ors..

4. In view of the aforesaid facts and circumstances, referred to above, and particularly the law laid down that the amendment brought in the Industrial Disputes Act, 1947 (Central) in the year 1984 is prospective, I hold that the view taken by the Labour Court that the workman has not completed 240 days continuous service in one calendar year suffers from the manifest error of law and therefore, liable to be set-aside. In this view of the matter and in view of law referred to above, this award deserves to be quashed.

5. Lastly, it is contended by Sri P.K. Mukherjee, learned Counsel for the respondents that the workman was gainfully employed, inasmuch as he got himself enrolled as Advocate and is a practising Advocate, therefore, he is not entitled for back wages. The workman concerned has made a statement in reply to the aforesaid contention that he is willing to surrender his Certificate (Licence to Practice), as held in the case reported in [Ajit Singh Vs. Presiding Officer, Labour Court and Another,](#) In this view of the matter, the workman concerned cannot be said to be gainfully employed because of the compulsion of un-employment he has no option but to continue for a short period as a practising Advocate, as he had no option for which he has made a statement before this Court that he is willing to surrender his Certificate. In this view of the matter, the award of the Labour Court is hereby set-aside, but considering long pendency of the award and admitted facts between the parties it will be futile to remand the matter to Labour Court, I, therefore, hold that the workman has

worked for more than 240 days continuous service in twelve calendar months before the date of termination of his services and cannot be said that he is not a workman and admittedly his services have been terminated without complying with the provisions of Section 6-N of the U.P. Industrial Disputes Act. 1947. Thus, the termination of the services of the workman concerned is held to be illegal and un-justified. However, in the facts and circumstances of the case, since the workman was gainfully employed for a short period, as stated above, though under the compulsion of un-employment but in my opinion, the ends of justice will meet if the workman concerned is re-instated with half back wages from the date of his termination till today and thereafter full wages till the date of reinstatement.

6. In view of what has been stated above, this writ petition deserves to be allowed and is hereby allowed. The award of the Labour Court dated 15th October. 1984. Annexure-26 to the writ petition, is quashed. It is held that the termination of the services of the workman being contrary to the provisions of Section 6-N of the U.P. Industrial Disputes Act. 1947, he is entitled for reinstatement with continuity of service, but instead of full back wages, the workman concerned will be entitled only half wages from the date of termination of his services till the date of award.

7. The writ petition is allowed. The award is quashed with modification as stated above.