

State of Uttar Pradesh Vs Parvez Akhtar

Court: Supreme Court of India

Date of Decision: Feb. 17, 2015

Acts Referred: Industrial Disputes Act, 1947 - Section 25F
Uttar Pradesh Industrial Disputes Act, 1947 - Section 6N, 6P, 6Q

Citation: (2015) 2 SCT 816

Hon'ble Judges: H.L. Dattu, C.J; A.K. Sikri, J; Arun Mishra, J

Bench: Full Bench

Advocate: Kavin Gulati, Senior Advocate, Vivek Vishnoi and M.R. Shamshad, for the Appellant; Rachana Srivastava, Utkarsh Sharma, Mukti Chowdhary, Ramesh Babu M.R., K.L. Janjani and C.D. Singh, Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Delay in filing and refiling the special leave petition(s), if any, is condoned. Delay in filing the application(s) for substitution, if any, is condoned.

2. Application(s) for substitution, if any, is/are allowed.

3. Leave granted.

4. Heard learned Counsel for the parties to the lis.

5. In these appeals filed by the State of Uttar Pradesh, common question of law has arisen for consideration. The Respondents in these appeals

were engaged on daily wage/ad-hoc basis. Their services were dispensed with after certain period. These workers raised industrial dispute

questioning the validity of their termination, which was referred to the labour court(s) for adjudication. In all these cases, the labour court(s) found

that they had worked for more than 240 days and as no retrenchment compensation or notice (or notice pay in lieu thereof) was paid, their

termination was without compliance of the mandatory provisions contained in Sections 6-N, 6-P and 6-Q of the U.P. Industrial Disputes Act,

1947, inasmuch as even the junior persons to these workmen were allowed to continue when their services were terminated.

6. The awards in each of these cases were rendered holding the termination to be illegal. As a consequence, the labour court(s) directed

reinstatement of their services. The said awards were challenged by the Appellant by filing writ petition in the High Court. The High Court has

dismissed the writ petitions confirming the findings of the labour court(s) in the awards. It is how these appeals have landed up in this Court

challenging the orders passed by the High Court dismissing the writ petitions filed by the Appellant.

7. At the time of hearing, learned Counsel for the Appellant produced the particulars in respect of each of these workers, which are as under:

8. Learned Counsel for the Appellant could not dispute that for want of compliance of the mandatory provisions of Sections 6-N, 6-P and 6-Q of

the U.P. Industrial Disputes Act, 1947, termination of the services of these Respondents was bad in law. He, therefore, confined his arguments to

the relief that is granted by the labour court(s). His submission was that since these employees were terminated long ago, the labour court(s) should

not have granted relief of reinstatement and only compensation should have been awarded in their favour. In support of his submission, he referred

to the judgment of this Court in the case of B.S.N.L. Vs. Bhurumal, (2014) 2 ABR 235 : (2014) 1 AD 467 : AIR 2014 SC 1188 : (2014) 140

FLR 901 : (2013) 15 JT 611 : (2014) LabIC 1093 : (2014) 1 LLJ 260 : (2013) 15 SCALE 131 : (2014) 3 SCJ 195 : (2014) 3 SCT 49 : (2014)

1 SLJ 293 , and particularly the following passages therein:

33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the

termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent

workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of

termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of

the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the

workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because

of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even

after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization See: Secretary, State

of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4

SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . Thus when he cannot claim regularization

and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be

given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation

only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would

not serve any purpose.

9. No doubt, in the aforesaid case, after taking into consideration the ratio of Uma Devi's case (supra) and other judgments, it was held that where

the services of a casual worker were terminated long ago, normally there should not be an order of reinstatement. However, certain exceptions

were also taken note of where reinstatement would be permissible, including in those cases where juniors were retained in service, as is clear from

the following paragraph in Bharat Sanchar Nigam Limited (supra):

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the

ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily

wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned

workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty

reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in

exceptional cases for the reasons stated to be in writing, such a relief can be denied.

10. In the present case, we find that there is a specific finding that when the services of the Respondents were terminated, juniors to them were

retained. We also find that many had worked for much longer period when their services were terminated. Having regard to the above and the

peculiar facts and circumstances of this case, we dispose of the civil appeals with the following directions:

(a) Those Respondents who have worked for nine years and above shall be reinstated into service with continuity of service and other service

benefits, provided they have not attained the age of superannuation. They shall also be entitled to a sum of Rs. 2,00,000/- each in lieu of back

wages for the intervening period.

(b) Those Respondents who had worked for nine years and more before their services were dispensed with, but have now attained the age of

superannuation, shall be given a sum of Rs. 5,00,000/- each, by way of compensation, in lieu of their claim of reinstatement and back wages.

(c) Those Respondents who worked for less than nine years shall not be entitled to reinstatement. Instead, they shall be given compensation of Rs.

5,00,000/- each in lieu of their claim of reinstatement and back wages.

(d) Insofar as reinstatement is concerned, the order shall be implemented with immediate effect and, in any case, within fifteen days from the date

of receipt of a copy of this order.

(e) Insofar as payment of back wages/compensation is concerned, that amount shall be paid in three equal monthly instalments, starting from April

01, 2015.