

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 973 of 2012

State of Uttarakhand and another Petitioner.

Versus

Balveer Singh Pundeer Respondent

With

Writ Petition (M/S) No. 903 of 2012

State of Uttarakhand and another Petitioner.

Versus

Rajes Kumar Pandey Respondent

Present :

Mr. Yogesh Chandra Tiwari, Standing Counsel, for the State of Uttarakhand/petitioners.
Ms. Abhilasha Tomar, Advocate, on behalf of Mr. Sandeep Kothari, Advocate, for the respondent.

JUDGMENT

Hon'ble Sharad Kumar Sharma, J.

In these two Writ Petitions, apart from certain minor factual disputes, the legal principal controversy remains the same. Hence, for the purposes of brevity, both the Writ Petitions are being decided together.

2. The controversy pertains to the service conditions and the consequential removal of the workman/respondent in the **Writ Petition on 973 of 2012**, which relates to the post, which the respondent was holding as a Book Lifter, and in the connected Writ Petition, being **Writ Petition No. 903 of 2012**, the respondent was working in the capacity of a Junior Clerk.

3. The controversy which emerges for consideration, is being first dealt with in relation to the **Writ Petition No. 973 of 2012**. According to the respondent workman in the written statement, which was filed in the proceedings before Labour Court, where the reference for adjudication was made as against the action taken by the petitioner of an oral dispensation of services, a reference was made under Section 4-K of the U.P. Industrial Disputes Act, 1947, “as to whether the termination of the services of the employee, i.e. respondent, herein, was in accordance with the provisions contained under the U.P. Industrial Disputes Act.”

4. The workman, in the written statement, has come forward with a case, that he was an unskilled labour, who was employed with the petitioner on 6th March, 2000, and he worked in the said capacity till 8th June, 2002, till his services were abruptly stopped on 8th June, 2002, and was not permitted thereafter to render his services, which gave him a cause of action to seek a reference under Section 4-K of the Act.

5. The workman in the proceedings before the learned Labour Court has filed the written statement, and had also appeared in the witness box as WW1, wherein, he has contended, that in the institution called as “Omkanand Sarasati Mahavidyala, when he was made aware and got the knowledge, that there exists a vacancy of IVth class employee, he had filed an application before the Principal. The same was responded by the Principal, and thereafter he was called upon to appear for participating in the interview.

The selection was conducted, alongwith the other candidates, and as consequence of the culmination of selection process, which was exclusively an interview, an appointment letter was issued in favour of the workman/respondent on 18th February, 2000, which was duly signed by the Principal as well as the workman.

6. Consequently, in accordance with the other evidences which were led before the learned Labour Court, both documentary and oral, it was observed, that the appointment of the workman was in accordance with the process of selection contemplated in the Degree College, in question, and after being appointed, he worked in the said capacity till 8th June, 2002.

7. The witness as adduced by the workman, he has stated that prior to the removal from the services on 8th June, 2002, he was never issued with any notices as such giving him an opportunity for adherence of the principle of natural justice, and as such, he contends, that the action taken by the employer was in violation of the provisions contained under Section 6-N of the Act, coupled with fact, that he was not provided with the retrenchment compensation by the petitioner prior to the dispensation of the services of the workman on 8th June, 2002.

8. The grievance of the workman before the Labour Court in written statement, and also in statement recorded as WW1 was, that when the institution was taken under the grant-in-aid, no opportunity of regularization of services of

the workman, was given by the employer, nor any reason has been assigned for removal was mentioned.

9. He further submitted, that no disciplinary inquiry was conducted, nor any committee was ever constituted instituted as such. Thus, for the aforesaid reason, the action taken by the petitioner was in violation of the provisions contained under Section 6-N of the Act.

10. The employer led his evidence by adducing Mr. Anil Kumar Naithani, as EW1, who had made a statement before the learned Labour Court, that prior to producing him as a witness on behalf of the employer, no authority as such was given to him to lead evidence or appear as witness on behalf of the institution itself, but even then Anil Kumar Naithani, had made a statement, that he was working as the Principle of the college, in question, ever since 2006 to 2009, and at the relevant point of time, when he has recorded his statement before the learned Labour Court, he was working as an Assistant Professor (Hindi). He submitted, that the document as produced as A-21 was an authority given to him for the purposes of making recruitment of Class-IV employees.

11. He submits that the list of employees as provided on record as paper No. 17B/2, page 5, it refers the name of the respondent workmen, who were shown to be working in the institution at the relevant point of time.

12. In the statement which was thus recorded by EW1, he admits the fact ,that the appointment letter, which was issued to the workman, it did bear the signature of the principal, who was the appointing authority, and at the stage when the institution was taken as grant-in-aid on 6th August, 2001, the respondent has continued in the services and thereafter to discharge his duty in the capacity in which he was inducted in 2000.

13. The case of the workman before the learned Labour Court on the basis of the record, as it was placed by the workman, as an evidence, it shows that ever since the date of his induction into the services, he has regularly worked with the respondent and has served for over 240 days in a calendar year, and as such, the dispensation of the services of the workman is without complying with the provisions contained under Section 6-N to be read with Rule 42 of the U.P. Industrial Disputes Rules, 1957, would be illegal.

14. The petitioner employer has raised an objection before the learned Labour Court, that the reference made as it was under Section 4-K, would not be tenable for the reason being, that the institution in question, where the workman was employed by the Principal, as it is evident from the records placed before it, will not be an industry within the definition of the Industry as defined under Section 2 (g) of the Act.

15. But, while dealing with the said question, the learned Labour Court has formulated the issues, which are extracted hereunder :-

“1. Whether the employer comes in the purview of an Industry as defined in (Section 2 (j) of the Act 1947 (Section 2 (k) of Uttar Pradesh Industrial Dispute Act 1947)].

2. Whether the workman had worked for 240 days in a calendar year or in twelve calendar months.

3. Whether the employers have adopted the procedure as prescribed by law before the termination of workman service.”

16. The learned Labour Court while deciding the first question, as to whether the institution, in question, where the workman was appointed as a Book Lifter was an industry or not, has considered the principles laid down based on the authorities rendered by the High Court of Allahabad in the matter of **Principal Amar Saheed Inter College Vs. Presiding Officer, Labour Court, Agra**, as reported in **2005 (106) FLR 5**, as well as that of the Hon’ble Apex Court in the matter of **Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and others**, as reported in **1998, SCC (L&S) 892**, wherein, it has been observed, that the educational institution since they are discharging a sovereign functions of the State, hence, on the basis of the principles provided by the Constitution Bench of Hon’ble Apex Court in **Bangalore Water Supply & Sewage Board Vs. A. Rajappa and others** as reported in **1978 SCC (L&S) 215**,

and particularly, in the context of the observation made in paragraphs 14 and 15 of the said judgment, the Court has held that the plea raised by the employer that the institution would be ousted from the definition of industry, was answered against him in the light of the judgment **Bangalore Water Supply & Sewage Board (Supra)**. Ultimately, based upon the aforesaid analysis drawn on the basis of the principles of the judgment rendered in **Miss A. Sundarambal (Supra)**, the Court has ultimately observed, that since it was no more in controversy, that the educational institutions, once they are discharging the sovereign powers which would be falling within a ambit of Article 21 of the Constitution of India, it would be an industry and the said question was answered against the employer.

17. The second question pertaining to the issue about the workman having worked for 240 days, the Court has considered the statement of WW1 Mr. Rajesh Kumar Pandey, and in context of the statement which was recorded therein, and which was not controverted, it was established, that the workman has worked after having being appointed for over 240 days, and in that eventuality, if at all the dispensation of the services was required to be made, the respondent ought to have complied with the provisions contained under Section 6-N.

18. For the purposes of substantiating, that the workman has worked for over 240 days, the said statement also stood fortified by the statement of EW1, where the evidence regarding the tenure of services rendered by the

workman was placed on record by way of an evidence, and on its scrutiny, the learned Labour Court has observed, that according to the attendance register, and the attendance as marked by the workman, it bears the signature of the employer along with the office seal, which were placed on record as an evidence. Apart from that, it was also admitted by EW1, who was cross examined, that the workman has worked for more than 240 days in a calendar year, i.e. w.e.f. October, 1998 till June, 2002.

19. While dealing with the evidence as placed before the Labour Court, the Labour Court, has ultimately come to the conclusion, that the principles under Section 6-N with regard to providing of a prior notice was not complied with in accordance with the legislative intent and purpose of Section 6-N to be read with Rule 42 of the Rules, 1967, and since the evidence on record established the fact that the workman has worked for over 240 days, the said question was also answered against the employer.

20. Ultimately, the analysis drawn by the learned Labour Court in view of its finding recorded in para 11, while considering its collateral provisions provided under the Industrial Disputes Act, in relation to the scope of Section 25-B of the I.D. Act, the Court has observed, that if a composite reading of Section 25-B, along with the provisions contained under Clause (2) (a) of Section 25-B of the Industrial Disputes Act of 1947, are taken into consideration, the non compliance of the provisions contained under Section 6-N of U.P. I.D. Act., or that as provided under the Central

Act, an abrupt termination of the services of an employee would be bad in the eyes of law.

21. Thus, accordingly based upon the aforesaid principles, and after making a quite an elaborate discussion pertaining to the authorities relied by the parties, the learned Labour Court, has rightly come to the conclusion, that the termination of the services of the workman/respondent, who has worked for over 240 days, as it stood established by evidence on record, was contrary to the provisions contained under Section 6-N, and hence, the award was rendered on 21st July, 2011, holding that the action taken by the employer for terminating the services was bad in the eyes of law, and thus, he was held to be entitled to get the salary and all other allowances as admissible to the workman.

22. Nothing contrary to the aforesaid fact and under law has been argued or established by the counsel for the petitioner, while pressing the Writ Petition, than to the observation, which has been made by the learned Labour Court, while assigning reasons for answering the reference made before the Labour Court in favour of the workman, in relation to the aforesaid two aspects about the institution being an industry, and the second aspect which is of more importance, that the workman has worked for over 240 days, which was a derivation made after the appreciation of evidence, and also owing to the statement of witnesses as it was adduced by the employer, there was a non compliance of the provisions contained under Section 6-N of the Industrial Disputes Act.

23. Hence, the impugned award of 21st July, 2011, cannot be said to be bad in the eyes of law, because there was an apparent non compliance of the statutory mandate of U.P. Industrial Disputes Act, which is a welfare legislation, which basically intends to safeguard an atrocious act of the employer as against the employee or dispensing the services at their own whims and fancies without resorting to the process provided under law, of providing of opportunity of hearing or compliance of the provision contained under Section 6-N, particularly, in relation to those employees, who have already served over 240 days of service.

24. In view of the aforesaid reasons, I do not find any merit in the Writ Petition. The Writ Petition is according dismissed.

25. In the connected **Writ Petition (M/S) No. 903 of 2012**, the respondent workman was appointed as a Junior Clerk on 6th October, 1998. Initially, he was appointed on a fixed salary, and at the stage, when he was appointed, it was a non aided institution till the institution was taken under grant-in-aid by the Government Order No. 2394/2001-3(110) dated 16th August, 2001. After the provincialization of the institution on 16.08.2001, the sanctioned strength of the teaching staff was made by the State but after the creation of the post in accordance with recommendation made by the State Government, transferring the assets and liability to the institution, the services of the workman have been dismissed.

26. Consequent to which, owing to the arbitrary action taken by the employer, the workman, herein, had approached the Labour Court, by seeking a reference, as to whether the action taken by the employer of dispensing the services on June, 2002, was in violation of the provisions contained under Section 6-N, because of the fact, the workman has shown to establish, that he has worked over for 240 days. Almost the basic legal ethos in this Writ Petition too happen to be akin to the one as already decided in the matter of **Writ Petition (M/S) No. 973 of 2012, State of Uttarakhand and others Vs. Balveer Singh Pundeer.**

27. In that eventuality, this Writ Petition too would stand dismissed, based upon the same principle, as it has already been discussed above.

28. It goes without saying that as a consequence of the dismissal of the Writ Petition, the benefits accruing to the respondent workman in pursuance to the impugned award rendered in favour of the workman will automatically follow to be enforced in accordance with law.

(Sharad Kumar Sharma, J.)

11.10.2023

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