

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ-Petition (M/S) No.1509 of 2012

State of Uttar Pradesh and Another ... Petitioners

Vs.

Sri Sukh Dev Singh and Another ... Respondents

Advocate: Mr. I.D. Paliwal, learned counsel for the petitioners.
 Mr. Devesh Ghildiyal, learned Brief Holder for the
 Presiding Officer/respondent no.2.

Hon'ble Sharad Kumar Sharma, J.

The petitioner-employer, UP State Education Department, in the instant writ-petition, has put a challenge to the impugned award, as it has been passed by the learned Labour Court on 30.09.2011 in Adjudication Case No.138 of 2009, "Sukh Dev Singh Vs. Executive Engineer, Upri Ganga Nahar Adhunikikaran Khand".

2. The reference, which was made before the learned Labour Court called to be answered, was to the effect that, as to whether the act of the employer of terminating the services of the workman was in contravention to the provisions contained under Section 6(N) of the U.P. Industrial Disputes Act.

3. The workman has come up with the case before the Learned Labour Court, that he was initially inducted with the petitioner as a daily wage employee ever since 01.01.1988 and he worked in

the said capacity till 01.08.1992, lastly, when his services were orally terminated by the respondent without assigning any reason, as such.

4. The reference was made under Section 4(K) of the U.P. Industrial Disputes Act, and the same was referred to be decided by issuance of the Government Order. The respective parties to the proceedings before the learned Labour Court have filed the written statements and have also led their respective evidence. The learned Labour Court after the exchange of pleadings and, as per the argument extended by the counsel for the parties, has formulated following questions to be answered. The relevant questions, as formulated by the learned Labour Court, are extracted hereunder:-

- "1. *Whether the Irrigation Department is an "Industry" as defined in Section 2(J) of the Act 1947 (Section 2(K) of Industrial Dispute Act 1947)*
2. *Whether the workman had worked for 240 days in a year or in twelve calendar months.*
3. *Whether the employer has adopted the procedure as prescribed under law before the termination of workman's service."*

5. The learned counsel for the petitioner has initially pressed his argument from the viewpoint, that the Irrigation Department would not be an industry, as it has been defined under section 2(J) of the U.P. Industrial Disputes Act. As such, the proceedings drawn by way of reference under Section 4(K) of the U.P. Industrial Disputes Act would be bad in the eyes of law, because it is not an "industry" under Section 2(K) of the Act of 1947.

6. The said matter was discussed by the learned Labour Court and the learned Labour Court, while returning its finding on the said question, has made a reference to paragraph no.14 and 15 of the judgment of the Hon'ble Apex Court, as it has been rendered by the Constitution Bench of the Hon'ble Apex Court, as reported in **(1978) 2 SCC 213, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others** and while referring to the concept of “industry”, as it has been dealt with by the Constitution Bench in paragraph no.14 and 15, it has observed that the Irrigation Department, once it performs a duty, which may be even a sovereign act of the State, will still constitute as to be an industry, in view of the Constitution entry made under the VIIth Schedule of the Constitution of India. Paragraph No.14 and 15 are extracted hereunder:-

“14. Likewise, an “industry” cannot exist without co-operative endeavour between employer and employee. No employer, no industry; no employee, no industry — not as a dogmatic proposition in economics but as an articulate major premise of the definition and the scheme of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

15. An industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives now, economic utilities material goods and services, not transcendental flights nor intangible achievements — are the functional focus of industry. Therefore, no temporal utilities, no statutory industry, is axiomatic. If society, in its advance, experiences subtler realities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of western heritage. So we are confined to material, not ethereal end products.”

7. Ultimately, based on the argument extended, before the learned Labour Court, it had answered the said question in favour of the workman holding therein, that the Irrigation Department would be an industry. The learned counsel for the respondent while responding to the argument extended by the counsel for the petitioner with regards to, as to whether the Irrigation Department would be an industry or not, has made a reference to paragraph no.27 of the judgment of the Hon'ble Apex Court as reported in **(2013) 16 SCC 16, State of Maharashtra and another Vs. Sarva Shramik Sangh, Sangli and others**, wherein the Hon'ble Apex Court, while making reference to the judgment of **Bangalore Water Supply(Supra)**, has observed that the Irrigation Department would be an industry and it will be falling within the ambit of an 'industry', as defined under U.P. Industrial Disputes Act and thus, would be amenable before the jurisdiction of the learned Labour Court. Paragraph no.27 of the said judgment is extracted hereunder:-

“27. It is, however, contended on behalf of the appellant that the said undertaking was being run by the Irrigation Department of the first appellant, and the activities of the Irrigation Department could not be considered to be an “industry” within the definition of the concept under Section 2(j) of the ID Act. As noted earlier, the reconsideration of the wide interpretation of the concept of “industry” in Bangalore Water Supply and Sewerage Board [Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 : 1978 SCC (L&S) 215] is pending before a larger Bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in State of Orissa v. Dandasi Sahu [(1988) 4 SCC 12] , referred

to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is received.”

8. The learned counsel for the petitioner has submitted that since the issue no.1, pertaining to the aspect, as to whether the Irrigation Department would be an industry, has already been answered by the Constitution Bench of the Hon'ble Apex Court and later on by the subsequent judgments rendered by the Hon'ble Apex Court, as referred to hereinabove, it cannot be disputed that, as of now and the law, as prevalent on date, the Irrigation Department would be falling to be an industry under section 2(J) of the U.P. Industrial Disputes Act and the said argument, as extended by the writ petitioner, is answered against him.

9. The second contention, which has been raised by the counsel for the petitioner, is to the effect, that the workman has not completed 240 days in a calendar year and, hence, no reference under Section 4(K) of the U.P. Industrial Disputes Act could have been made and answered in his favour.

10. The learned Labour Court, has dealt with the said aspect from the viewpoint, that while the workman was in service, he was issued with an I-Card by the Assistant Engineer, which has certified the fact, that he was the employee of the Department and has worked regularly ever since his initial induction in 1988. The said aspect, which was pleaded by the workman in the written statement

filed by him, contending therein, that ever since 1988 till his services were orally terminated on 30.07.1992 he had continued to work regularly, was not disputed by the employer in the written statement filed by them.

11. In fact, the said aspect, as pleaded by the workman, was never denied by the employer, by filling any specific rebuttal to it and by filing a written statement. Hence, the learned Labour Court has rightly observed that, in view of Sub-rule 9 of Rule 12 of the Rules framed under the U.P. Industrial Disputes Act, the presumption would be that, the fact, as it has been pleaded by the workman in the written statement pertaining to the continuity of services rendered by him, would remain to be a fact unrebutted. The said aspect has to be read in favour of the workman, that he has worked for over 240 days, in the absence of there being any evidence lead to the contrary, because the workman, based upon the evidence placed on record, has been able to successfully established that he has worked for over 240 days in a calendar year by evidence, which was produced by him before the learned Labour Court.

12. Though, out of the context, the learned counsel for the petitioner has submitted, that in the written statement, which he has filed before the learned Labour Court, he has submitted that the workman, in fact, was never employed with the Irrigation Department.

13. Much credence cannot be placed on this argument extended by the counsel for the petitioner, as of now, for the reasons being that, apart from the pleadings raised in the written statement being vague, the same was never a contention, which was ever agitated before the learned Labour Court for enabling the respondent-workman to established as to whether he was employed or not. Even otherwise also, the argument, as extended by the learned counsel for the petitioner of engagement of the workman with the petitioner industry, the same has been answered by the learned Labour Court while answering question no.2, as determined by the learned Labour Court.

14. Hence, in view of the aforesaid reasons, and, particularly, since most of the pleadings, which have been raised by the workman, remain unrebutted, the reference, which has been answered in favour of the workman, cannot be said to be suffering from any legal vices, as such, to call for an interference in exercise of my supervisory jurisdiction.

15. Thus, the writ-petition fails and the same is, accordingly, dismissed.

(Sharad Kumar Sharma, J.)

10.10.2023