

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ-Petition (M/S) No.1272 of 2011

State of Uttarakhand through Secretary, Irrigation,
Dehradun and Another

... Petitioners

Vs.

Sahdev Singh

... Respondent

Advocate: Mr. R.C. Arya, learned Standing Counsel for the State of
Uttarakhand/ petitioners.
Mr. M.C. Pant, learned counsel for the respondent through
video-conferencing.

Hon'ble Sharad Kumar Sharma, J.

The brief facts of the case are that the petitioners –State has put a challenge to the award dated 01.11.2010 as it was passed by the learned Presiding Officer, Labour Court, Haridwar in Adjudication Case No.414 of 2009, “Sahdev Singh Vs. Adhishashi Abhiyanta, Nalkoop Khand, Roorkee, District Haridwar”, wherein the reference made under Section 4(K) of the U.P. Industrial Disputes Act, 1947 (hereinafter to be referred as “the Act of 1947”) with regards to the illegal termination of the services of the private respondent has been answered against the State and in favour of the workman.

2. As a consequence to the aforesaid adjudication made by the Labour Court, the Labour

Court has drawn an opinion that termination of the workman was held to be illegal and hence, he was held to be entitled to all the service benefits from the date of the termination and would be treated to be in services throughout. But, however, the backwages were not paid to the respondent-workman.

3. Brief facts of the case are that the workman has contended that he was employed with the petitioners / employer in its *Nalkoop Khand* as an Assistant Mechanic as back as on 11.04.1985. He contends, that he had continuously discharged his responsibilities in the said capacity but, all of a sudden, his services were orally terminated on 18.06.1987 without assigning any reason or after a prior notice. It is contended that the manner in which the services were terminated it would amount to being a retrenchment despite of the fact that the respondent-workman contends that he has worked over 240 days in a calendar year. Hence, he contends that, act of oral termination of his services as made by an order of 18.06.1987, would be arbitrary and bad since being in violation to the provisions contained under Section 6 (N) of the Act of 1947, in the absence of there being any prior notice given to the workman by the petitioners/ employer; about their intention to terminate services of the workman, who contends to have worked regularly ever since 11.04.1985.

4. It is further contended by the learned counsel for the workman before the learned Labour Court, that the oral termination dated 18.06.1987 would be bad in the eyes of the law because, if there was any stigma with regards to rendering of his services, the respondent ought to have resorted to a disciplinary proceeding by issuing a chargesheet, conducting the domestic inquiry and then could have dispensed with his services and having not done so, it would be in violation of the provisions contained under Section 6(N) of the Act of 1947, for the reason being, that petitioner contends that when he was appointed on 01.04.1985 as an Assistant Mechanic, he was appointed as against the permanent post and thus, after taking work from him even after his termination, would be in violation to the provisions contained under Section 6(O) of the Act of 1947.

5. Another limb of argument of the workman before the learned Labour Court was that an identically placed employees, who were subsequently with the department, since they had been retained and they continued to work, the action of the respondent of termination of the services of the workman on 18.06.1987 would be in violation of the provisions of Section 6(P) of the Act of 1947.

6. On the other hand, the petitioners' case before the learned Labour Court, as pressed, was from the following perspective:-

1) That the appointment of the respondent-workman was as a part-time Assistant Mechanic and it was contended that he was appointed for a fix term of three years and he had never worked for three years and, hence, his dispensation of services w.e.f. 18.06.1987, by an oral order, was absolutely justified, since the respondent-workman is contended to have no lien, as such to the post against which he was appointed as Assistant Mechanic, as such, compliance of Section 6 (N) of the Act of 1947, according to the petitioners, was not mandatory.

2) Besides this, a very peculiar exception has been carved out by the petitioners, that the respondent-workman had worked for only 2.5 hours in a day, he will have no lien to be considered to continue in the services and thus, it is contended that the termination of the services of the respondent-workman was justified.

7. So far as these issues are concerned, before coming to Section 6(N) of the Act of 1947, the reference made to Section 6(P) of the Act of 1947, becomes relevant to be considered. If the

judgment of the learned Labour Court is taken into consideration, the Labour Court after considering the documents produced by the workman by virtue of List 16B (ii), that included the muster roll of the department, the receipts and various other documents, which have been relied by the workman in support of his case, apart from the photocopy of the Measurement Book 278(L), Measurement Book 298(L) where entries show that the applicant has worked for the aforesaid period, would itself lead to an inference that he has worked for over 240 days in a calendar year. As such, he was entitled to be given with the protection of Section 6(N) of the Act of 1947.

8. The workman had appeared in the witness box and had recorded his statement as WW1 and has produced his evidence as DW1. On the contrary, the petitioners had come up with the case, while answering the reference made to before the Labour Court, and the learned Labour Court while referring to the written statement filed by the petitioners, had submitted that though they admit that the workman was appointed by an order of 01.06.1990 Niyukti dated 02.04.1985, but they have in exception contended that it was an appointment made for a fixed term and he has never worked for more than 240 days in a calendar year.

9. Apart from it, it was contended that since the proviso of the U.P. Industrial Disputes Act, 1947 would not be applicable to justify the reference made under Section 4(K) of the said Act.

10. What is important, is that, if the written statement of the workman is taken into consideration, which has been dealt with by the learned Labour Court; before the Labour Court, the petitioners have never raised the plea with regards alleged philosophy of abandonment of services, as it has been now argued by the learned counsel for the petitioners before this Court, or as pleaded in the written statement, filed by him before the Labour Court.

11. This Court is of the view, that when in a judicial proceedings a party raises a different set of pleas, either in defence of its case or while pressing its case and, if it chooses to press only some of the grounds, wherein the Court is not supposed to deal with all those grounds, which were not even pressed by the parties to the proceedings before the Labour Court and, hence, after losing the case as that stage, they cannot revert back and take a stand that the Labour Court has erred at law by not dealing with the pleadings raised in written statement. Though, there was no such argument raised to the contrary by the petitioners before the Labour Court about the theory of the abandonment and as such, in these eventuality, the Labour Court

was not supposed to return its finding about the effect of abandonment as it has been now argued by the learned counsel for the petitioners even before this Court.

12. As far as the case of the workman is concerned, before the Labour Court he has specifically taken a plea of the effect of Section 6(P) of the Act of 1947, that the persons, who had been appointed thereafter, have been still continued in the job whereas workman's services have been orally dispensed with. In fact, there is no answer forthcoming from the petitioners' counsel with regards to the effect of Section 6(P) of the Act of 1947 and, hence, the presumption would be that, as per the written statement filed by the respondent-workman, once his services have orally been dispensed with and juniors have been retained, the act of the respondent, apart from the fact, that it would be in violation of provisions contained under Section 6(P) of the Act of 1947, it would be malicious and arbitrary too.

13. Based upon the *inter se* plea, the Labour Court has formulated the following points of determination to be answered, on the basis of the pleadings, which have been raised before the Labour Court, which is extracted hereunder:-

"In this case only three important points are to be adjudicated."

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

14. The workman before the Labour Court has specifically made reference to the provisions contained under Rule 12(9) of the U.P. Industrial Disputes Rules of 1957, wherein he has contended in his affidavit, which was filed in support of the written statement, which remained unrebutted. That the presumption would be that, the averments made in the affidavit, filed in support of his case by the workman, in the absence of rebuttal, would be treated as to be true, in the light of the provisions contained under the proviso to Rule 12(9) of the U.P. Industrial Disputes Rules of 1957.

15. The learned Labour Court, after considering the statements, recorded by the witnesses and also the evidence, which was produced by other witnesses before the Court, had come to a conclusion, particularly, in the context of the statement recorded by WW1, that he has worked for more than 240 days in a calendar year and which was an unrebutted fact. The said

testimony was of EW1 which was believed with by the respondent, wherein the Assistant Engineer of the petitioners' department, who is said to have been appointed in 1983, has recorded his statement to support his list of documents, filed by way of List B(i)12 wherein in paragraph no.8, it has been answered by the employer that in 1997, it was found that the workman was not working, the said statement would have no bearing, for the reason being, that when the services have been dispensed with orally on 18.06.1987, then obviously, the statement made by the Assistant Engineer in relation to the working of the present workman from April 1991 to August 1991 and, thereafter, as per the details made in the statement, it leads to an inference that, as per Form-28 i.e. hand receipt issued by the Department, that the workman has worked for more than 240 days and, accordingly, the conclusion drawn by the Court cannot be said to be perverse and contrary to the evidence on record with regards to non-compliance of Section 6(N) of the UPID Act 1947.

16. The learned counsel for the petitioners before this Court has submitted that the Irrigation Department will not fall to be within the definition of industry, as provided under the U.P. Industrial Disputes Act. In support of his contention, he has relied upon the judgment rendered by the Hon'ble Apex Court in **Civil Appeal No.6093 of 2021**, the

State of Madhya Pradesh & Ors Vs. Somdutt Sharam. With all due reverence at my command, this Court is in absolute disagreement with the argument extended by the learned counsel for the petitioner, because the above judgment of 29.09.2021 was rendered by the Hon'ble Apex Court, wherein the Hon'ble Apex Court was scrutinizing the judgment of the Division Bench of the Madhya Pradesh High Court, which was rendered in a writ appeal, where the impact of an industry was being considered, in the context of the provisions contained under the Industrial Disputes Act, 1947, and not in relation to the U.P. Industrial Disputes Act, 1947, which will have its independent existence.

17. The analogy given therein, in the context of the provisos contained under Section 25(N), was for the purpose of interpreting, as to whether the Irrigation Department falls to be an industry or not, will not be attracted, because of the fact, that learned Labour Court while dealing with the arguments extended by the petitioners before it, has considered the impact of the Constitution Bench judgment, as reported in **2006 (108) FLR 213 SCC/ (2006) 1 SCC 106, R.M.Yellatti vs. Assistant Executive Engineer**, wherein it has been observed that the Irrigation Department is constituted as to be an industry within the meaning of Section 2(J) of the Act of 1947. Hence, under

Section 2(K) of the U.P. Industrial Disputes Act, 1947, the Irrigation Department would be deemed to be an industry.

18. Besides this, the learned Labour Court, while dealing with the argument and the question as formulated to be decided by the Labour Court, has dealt with the question as to whether the Irrigation Department is an industry or not by recording its finding in paragraph no.5, which was extracted from the judgment of **R.M. Yellatti (*supra*)** it has been observed that the Irrigation Department of the Government would constitute, as an industry and it will be falling within the ambit of and an adjudication to be made by the reference Court under Section 4(K) of the Act of 1947.

19. In continuation thereof, the Hon'ble Apex Court has also dealt with the judgment of the **Banglore Water Supply and Sewage Board Vs. A. Rajappa and Others**, as reported in **(1978) 2 SCC 213** and has observed that the Irrigation Department was an industry, as defined under Section 2(K) of the Act of 1947, in the light of the judgment of **the State of Uttar Pradesh Vs. Jai Bir Singh**, as reported in **(2017) 3 SCC 311**.

20. In view of what has been observed by the learned Labour Court, in the light of the judgment of the Hon'ble Apex Court, particularly, that as referred to in the judgment of the Constitution Bench in the matter of **R.M. Yellatti (*supra*)**, the

Irrigation Department would constitute as to be an industry.

21. While dealing with the question of as to whether the respondent has worked for over 240 days, a detailed answer has been given by the Labour Court, in its paragraph no.16, while analysing that the details of the number of days for which the workman has rendered his services, as would be apparent from the Muster Roll, the Labour Court has come to any analytical conclusion that the workman has worked for 240 days in a calendar year and, hence, compliance of Section 6(N) of the Act of 1947 becomes necessary.

22. While elaborating the said argument, in the context of the effect of working of 240 days, it has been argued by the learned counsel for the petitioners, that he has filed several applications before the Labour Court for summoning the muster roll entries, in order to further establish, that he has worked for 240 days but no such records was produced by the employer. Thus, in view of the observations made in paragraph no.16 and 17 by the learned Labour Court, based upon the muster roll entries and thereby coming to a conclusion that he has worked for more than 240 days in a calendar year preceding termination, cannot be said to be perverse or contrary to the evidence on record.

23. After having heard the learned counsel for the parties and after going through the impugned award of 01.11.2010, I do not see any apparent legal error, which could call for interference under Article 227 of the Constitution of India by exercising my supervisory jurisdiction while scrutinizing the award of 01.11.2010.

24. Thus, I do not find any merits in the writ-petition and the writ-petition would, accordingly, stands dismissed.

(Sharad Kumar Sharma, J.)

16.08.2023

Sukhbant/