

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ-Petition (M/S) No.540 of 2022

Kailash Chandra

... Petitioner

Vs.

Director Udyan Evam Khadya Prasanskaran
Uttarakhand and Others

... Respondents

Advocate: Mr. Nagesh Aggarwal, learned counsel for the petitioner.
 Mr. Yogesh Chandra Tiwari, learned Standing Counsel for
 the State.
 Mr. Yashpal Singh, learned counsel holding brief of
 Mr. Neeraj Garg, learned counsel for respondent no.3.

Hon'ble Sharad Kumar Sharma, J.

Certain basic facts, which are not in dispute and as argued by the learned counsel for the petitioner-workman, is that the petitioner, while giving a challenge to the award as rendered by the learned Labour Court on 15.03.2021, as a consequence of the Adjudication Case No.22 of 2017, "Director Horticulture Department and Others Vs. Kailash Chandra", the learned Labour Court was referred to answer the question as to, "whether the act of respondent of dispensing the service of the petitioner, who was working as a Chowkidar w.e.f. 01.11.2016 was justified or not". The said reference has been answered as against him by the learned Labour Court. Consequently, the writ-petition has been preferred.

2. Few basic facts, which have been argued by the learned counsel for the petitioner, are that, it is not in controversy, that the petitioner was initially appointed with the respondent as a daily-wager chowkidar on 01.02.2014 and his status of being a daily-wager employee continued so till his nature of appointment was converted into a contractual appointment by execution of a contract on 16.04.2015, which finds place on the record of this writ-petition as **Annexure No.5** to the writ-petition.

3. The basic principle of law is, that as soon as the petitioner has acceded to the term of contractual appointment, which was executed on 16.04.2015 and the contract which was supposed to subsist for a period of one year, it would be deemed that he has acceded to the terms and conditions of the contractual appointment. In that eventuality, he cannot, later on, after the cessation of its period of contract revert back to plead, that his status would be determined as to be a daily-wager employee to be determined w.e.f. 01.02.2014. The logic behind it is that under the service jurisprudence a daily-wager enjoys the different status altogether, as compared to that of a contractual employee.

4. The contractual employee and its terms of employment are specifically governed under the terms of contract, which is *inter se* binding between

the signatories to the contract, which was inclusive of the workman and his employer. The consequential effect of which would be, that as soon as the contract has been executed and the petitioner has acceded to the terms of contract, he loses his status of a daily-wager, which he initially enjoyed w.e.f. 01.02.2014, till the contract was executed on 15.04.2015.

5. Subsequent and as a consequence to the execution of the contract, is that the entire terms and conditions of the service, the remuneration, the consequential service benefits would be, as per the terms, which was entered into in the contract of 16.04.2015. It is not in controversy, at the hands of the present petitioner, that the said contract, as executed on 16.04.2015, it was for a period of one year only and that was supposed to expire on 16.04.2016 and so, it did.

6. The petitioner, thereafter, with the cessation of the terms of the contracts, which expired with the lapse of time on 16.04.2016, contends that he was permitted to continue to work as a chowkidar with the respondent-department which continues till 01.11.2016 as a daily-wager. Hence, he contends that the act of respondent of discontinuance of his service w.e.f. 01.11.2016, was in violation of the provisions as contained under Section 6-N of the U.P. Industrial Disputes Act, 1947.

7. For the said purpose, a reference to the provision contained under Section 6-N of the U.P. Industrial Disputes Act, 1947 becomes necessary for its consideration. The relevant part of which is extracted hereunder:-

“Section 6-N. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Government.].”

8. The provision, as contained under Section 6-N of the U.P. Industrial Disputes Act, 1947 in its strict sense, has provided, that for the purpose of providing a notice for termination of service there has to be a mandatory compliance of the condition to be specified by the employee, that he has worked for a period of ‘not less than one year’. The question would be, as to, in the given set of circumstances, as to how this period **‘not less than one year’**, has to be determined. According to the perception of the petitioner, what he intends that in order to attract the implications of Section 6-N of

the U.P. Industrial Disputes Act, 1947, he computes his period of service from the date of his initial appointment i.e. on 01.02.2014, which was as a daily-wager.

9. Hence, he contends, that if the period of working is calculated w.e.f. 01.02.2014, he would be satisfying the conditions of the provisions contained under Section 6-N of the U.P. Industrial Disputes Act, 1947 of having worked for more than one year, from the date preceding to the date of the action taken of termination of service. Thus, he contends, that the action of the respondent of dispensing his service w.e.f. 01.11.2016 would be in violation of the provisions as contained under Section 6-N of the U.P. Industrial Disputes Act, 1947.

10. But, this Court is in respectful disagreement with the argument of the learned counsel for the petitioner. The logic behind it is, that as soon as the petitioner has acceded to the terms of the contract of which he was a signatory, as it was executed on 16.04.2015, he was bound by his service conditions according to the covenant of the terms of the contract and his service conditions or the contract qua his employer, would be governed by the terms of the contract and not by the general rule or general law, as applicable to the daily-wagers and then, particularly, when he has enjoyed that period of contractual appointment,

which ceases with its period on 31.08.2016. He would not regain his status of that of a daily-wager.

11. Let us remotely presume, that even if the argument of the petitioner is accepted, that he would regain the status of daily-wager in order to attract provision of Section 6-N of the U.P. Industrial Disputes Act, 1947, this Court is not in agreement, for the reason being, that in that eventuality, his daily-wage period would be reckoned from the date when the terms of the contract which was over and when he was permitted to work for an extended period till 01.11.2016.

12. Hence, this Court is of the view, that as far as the petitioner is concerned, for the purpose of determining the period of one calendar year preceding the date of action of termination would be w.e.f. 01.11.2016, till the end of the period of the contract and it cannot be stretched to be applied w.e.f. 01.02.2014. Apparently, since after the completion of the period of the terms of the contract and even after the extended period, till the action of dispensation of services has taken place on 01.11.2016, he has not been apparently shown to have worked for 240 days in a calendar year. The action of termination taken by the respondent on 01.11.2016 cannot be said to be in violation of the provisions as contained under Section 6-N of the U.P. Industrial Disputes Act, 1947.

13. In that eventuality, this Court is of the view, that since after the end of the terms of the contract, he will not regain his status of a daily-wager w.e.f. 01.02.2014, as a consequence thereto, no benefit of Section 6-N of the U.P. Industrial Disputes Act, 1947 could be extended to him, for the purpose of providing a prior notice of termination of service, as contemplated therein, which is only available to those employees, who have completed 240 days of service prior to the date of action taken of dispensation of service.

14. Since, there is nothing on record to show that after the expiration of period of the service under contract, the petitioner has worked for 240 days in a calendar year, as a result, he could not at all be extended with benefit of Section 6-N of the U.P. Industrial Disputes Act, 1947. As such, the judgment rendered by the trial Court cannot be said to be suffering from any legal vices, calling for interference for exercise of my supervisory jurisdiction under Article 226 of the Constitution of India.

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

(Sharad Kumar Sharma, J.)

12.09.2023