

Court No. - 17

Case :- WRIT - C No. - 6677 of 2016

Petitioner :- Superintendent Gandhi Memorial And Associated Hosp. Lko And Anr

Respondent :- Satish Chandra Pandey And Anr

Counsel for Petitioner :- Krishna Chandra Srivastav, Shubham Tripathi

Counsel for Respondent :- C.S.C, Aatreya Tripathi, Bal Gangadhar Tripathi, Onkar Pandey, Prakash Chandra Baranwal

Hon'ble Alok Mathur, J.

1. Heard Sri Inamuddin Ahmad holding brief of Sri Shubham Tripathi for the petitioners as well as Sri Onkar Pandey for the respondent-workman.

2. By means of the present writ petition the petitioners have challenged the legality and validity of the award dated 22nd September, 2015 passed by Industrial Tribunal (II), U.P., Lucknow (hereinafter referred to as the Tribunal) whereby the claim filed by the respondent against his termination has been allowed. While allowing the claim of the workman the Tribunal has held his termination to be illegal and allowed his claim with reinstatement and consequently benefits.

3. It has been submitted by learned counsel for the petitioners that as per the claim preferred by the respondent-workman he was appointed on 3.4.2000 on a vacancy created on retirement of one Mohd. Farukh, Sick Attendant on 31.1.2000 on permanent basis till 15.1.2002. It was stated that without there being any reason nor compliance of Section 6 N of the Act of 1947 his services were terminated which according to claimant were in violation of Section 6 N of U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). It was stated that he had worked for 240 days in a calendar year preceding his termination and no domestic inquiry was conducted by the employer prior to terminating his service.

4. The claim was opposed by the petitioners before the Tribunal. It was stated that the workman was appointed on daily wage basis on 3.4.2000 till 16.8.2001 and as and when there was requirement of work he was subsequently reappointed. It was stated that during his services he had worked from 3.4.2000 till 30.6.2000, from 22.1.2001 to 19.2.2001, from 8.3.2001 to 6.4.2001, from 19.4.2001 to 18.5.2001, from 7.11.2001 to 6.12.2001, from 18.7.2001 to 16.8.2001. It was further stated that on 16.1.2002 Government Order was issued banning *ad hoc*

appointments and consequently the services of the respondent-workman was never extended after coming into force of the said Government Order.

5. The workman had opposed the written statement filed by the petitioners and stated that he had worked continuously since 1.4.2000 till 15.1.2002 and for certain period though he worked continuously but wages were not paid for the said period and when he requested repeatedly for grant of his wages his services were dispensed with on 15.1.2002 by oral orders. In support of his claim the workman filed documents as well as gave oral statement before the Tribunal to prove his case. To demonstrate that he had worked between 1.4.2000 till 15.1.2002 the Tribunal by means of order dated 23.10.2011 had directed the employer/petitioners to produce service records of the claimant. Despite sufficient opportunity being granted to the petitioners they did not produce any document so as to demonstrate that the claimant /workman had not worked for 240 days or that there was any infirmity in his claim moved before the Tribunal. Neither any documentary evidence was filed by them nor any oral testimony was led to oppose the claim of the workman.

6. During the arguments it was stated on behalf of the petitioners that the workman was kept on daily wage basis as and when there was requirement of work and his services were subsequently disengaged and he was reinstated when there was availability of work. They had opposed the claim of the workman stating that he had not worked for 240 days in a calendar year and accordingly his claim deserves to be rejected on this score alone.

7. The Tribunal duly considered the case of the workman as well as of the petitioners and returned a finding that from the documentary evidence led by the workman he had been able to demonstrate that he had worked from 1.4.2000 till 15.1.2002 with the petitioners while on the other hand, the employer/petitioners did not file any written or oral or documentary evidence to oppose the claim and consequently it has relied upon the evidence led by the workman and held that he has been able to demonstrate that he had worked for more than 240 days in a calendar year and in violation of Section 6 (N) of the Act of 1947 no notice was given to him prior to his termination nor was paid salary in lieu of notice and consequently held that the termination was illegal and arbitrary and allowed the claim of the workman directing the petitioners to reinstate him in service with consequential benefits.

8. The petitioner while assailing the impugned order has vehemently submitted that the Tribunal has misdirected itself in

calculating that the claimant had worked for 240 days. It has been stated that they had given a list of dates during which the claimant had worked and according to them he has worked for only 190 days till 6.12.2001.

9. The Tribunal has further returned a finding that the workman had been made permanent prior to his termination as an order dated 30th December, 2001 passed by Head of Department, Surgery Department, K.G.M.U., Lucknow was filed clearly indicating that the respondent workman has been made permanent on the vacancy created on the retirement of one Mohd. Farukh, Sick Attendant.

10. Considering the aforesaid averments, firstly the workman was able to demonstrate that he had worked from 1.4.2000 till 15.1.2002 and in this regard only dispute is with regard to intermittent periods during which according to the petitioners the claimant had not worked though no document has been filed to look into the fact that more than five times during this period he was taken back in services and is admitted by the petitioners themselves the provisions of Section 6 (N) would come into play in support of the workman as artificial breaks has been caused by the petitioners and no cogent explanation could be given as to why he was kept out of services during intermittent periods. The petitioners never filed any document or led any evidence opposing the said claim while, on the other hand, the workman had filed documents with regard to his services and also examined himself before the Tribunal in support of his claim.

11. In this regard reference may be made of the judgement of Hon'ble Supreme Court which in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324** where it has been held as under:-

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other

acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

12. It is well settled that the burden of proof would be on the employee to show that he had worked for 240 days so as to seek benefit of section 6 N of the Act, by furnishing oral or documentary evidence. In the instant case the employee/respondent was successfully able to demonstrate the same before the tribunal by oral and documentary evidence.

13. This Court has gone through the award and noticed that the Tribunal has duly considered the rival contentions of both the sides and has recorded a finding that the workman has worked for 240 days in a calendar year and that his services were dispensed with in violation of Section 6 N of U.P. Industrial Disputes Act, 1947. There was no contrary evidence on record or any other material to disbelieve the averments made by the workman.

14. In light of the above, I do not find any infirmity in the order of the Tribunal so as to necessitate interference under Article 226 of the Constitution. The petition being devoid of merits is **dismissed**.

(Alok Mathur, J.)

Order Date :- 27.10.2023
RKM.