

Court No. - 17

Case :- WRIT - C No. - 9285 of 2023

Petitioner :- U.P. Forest Corporation , Lko. Thru.
Its Managing Director And 2 Others

Respondent :- Presiding Officer , Labor Court U.P.
Ayodhya And Another

Counsel for Petitioner :- Krishana Kumar Singh

Counsel for Respondent :- C.S.C., Jagdamba
Prasad Mishra

Hon'ble Alok Mathur,J.

The present writ petition has been filed by the U.P. Forest Corporation assailing the award dated 25.4.2023 passed by the Labour Court, Ayodhya.

The brief facts of the case are that the respondent-workman was engaged by the petitioner as Daily Labour Scalar who was involved in cutting of trees. It is stated that cutting of trees was declared to be illegal by various statutory enactments as well as by the Hon'ble Supreme Court and, accordingly, the persons who were involved in cutting of the trees for the Corporation became surplus and, consequently, were retrenched.

It is stated that the respondent-workman along with other persons was retrenched and being aggrieved by the said action of the petitioner, had approached the Labour Court.

Initially, the matter was referred for conciliation but as no settlement could be arrived at and upon the failure report submitted by the Conciliation Officer a reference was made for adjudication by the Labour Court.

The reference it was provided that the Labour Court would consider as to whether the retrenchment of the workman on 28.02.1995 is valid or not and as to what relief he is entitled to.

The workman had submitted that the petitioner-corporation is involved in planting trees and also collecting and selling forest produce and also for cutting trees and selling the said wood and, accordingly, submitted that the operations of the

corporation are commercial in nature and, accordingly, fall within the definition of the Industry as provided under the Act of 1947.

For the proper administrative working of the Corporation it has been divided into Regions which were further sub divided into Divisions which are headed by Divisional Manager.

It is stated that the petitioner was appointed as a Field Assistant on 10.01.1983 and, subsequently, he had worked at various places and subsequently was promoted to the post of scalar on 20.11.1985. He worked to the full satisfaction of his superiors and there was never any complaint lodged against him.

For the purpose of the regularization various representations were made by the petitioner along with other workmen and also a writ petition was filed in the High Court. It is stated that when the employees pressed for the regularization their services were terminated in the most whimsical manner in contravention of all the legal principles.

The claim was opposed by the petitioner who appeared before the Labour Court and stated that they had retrenched petitioner and other similarly situated employees in accordance with law. They had stated that they had prepared a seniority list and adhered to the principle of last come first go as provided in Section 6 P of the U.P. Industrial Disputes Act, 1947 and they have complied with the provisions of Section 6 N of the U.P. Industrial Disputes Act, 1947 and one month's notice was given.

The workman on the other hand had submitted that the retrenchment was illegal and arbitrary and in violation of provisions of Section 6 P of the U.P. Industrial Disputes Act, 1947 wherein it is provided that principle of last come first got was to be adhered to and in these circumstances submitted that persons junior to the petitioner were still working and, in fact, no seniority list was prepared in accordance with law and though a list has been prepared whimsically without adhering to seniority or any other method and submitted that

entire action of retrenchment is illegal and arbitrary and same deserves to be set aside.

The Tribunal has considered the entire facts in detail as stated by both the sides.

To determine the issue as to whether the retrenchment of the respondent workman was valid or otherwise petitioner was directed to submit all the documents including the seniority list, the various Government Orders and also the orders passed by the Corporation wherein the decision was taken to retrench the workman.

It seems that the relevant documents including the seniority list were never filed by the petitioner and, consequently, the Labour Court has taken adverse inference of the said facts and held that the workman has been able to sufficiently prove that his retrenchment was in violation of provisions contained in Section 6 P and 6 Q of the U.P. Industrial Disputes Act, 1947 and, accordingly, the claim was allowed directing the petitioner to reinstate him in service till the date of his superannuation along with 40% backwages and Rs.20,000/- as cost of the litigation.

The petitioner has submitted that the order of the Tribunal is illegal and arbitrary. He submits that workman was not able to demonstrate that he has worked for 240 days in a calendar year preceding the date of his termination and, consequently, the finding recorded by the Labour Court that the termination was in violation of the Section 6 N of the Act of 1947, is clearly illegal and arbitrary.

Though the disengagement of the workman by the petitioner was also been held to be violative of Section 6 P and 6 Q of the U.P. Industrial Disputes Act, 1947 but no challenge to the same has been made in the present writ petition.

It has further been submitted by the learned counsel for the petitioner that a similar order was assailed by the petitioner before the Division Bench in the Special Appeal, leading being Special Appeal No. 1036/2005 [U.P. Forest Corporation vs. Ram Surat Verma & Others] where these special

appeals were allowed and the judgment of the learned single judge dated 01.9.2005 was set-aside.

A perusal of the said judgment indicates that in the said case it was held that provision of Section 25 N of the Industrial Disputes Act, 1947 do not apply in the present case and, therefore, no prior permission is required and the case of the respondent-workman would be covered by provision of Section 6 N of the U.P. Industrial Disputes Act, 1947.

The second aspect considered by the Division Bench was with regard to the application of Section 6 B and Section 6 Q of the Act of U.P. Industrial Disputes Act, 1947. With regard to the application of the said Sections it was held that a reference to Section 6 B is clearly out of context and Section 6 Q only talks about the consequences of retrenchment and it is in the aforesaid circumstances the special appeal was allowed.

In the present case though the Tribunal has held the termination to be in violation of Section 25 N of the Industrial Disputes Act, 1947 and this Court is of the considered view that the provisions of the Industrial Disputes Act, 1947 do not apply to the respondent workman and consequently to that extent the order of the learned Tribunal is illegal and arbitrary.

The other relevant question is with regard to the application of Section 6 P of the U.P. Act of 1947. Section 6 P provides the procedure for retrenchment and it is clearly provided that unless there is a contract to the contrary, the employer shall ordinarily retrench the workman who is the last person to be employed in that category unless for reasons to be recorded, the employer retrenches other workman.

It was categorically stated by the workman that persons junior to him are still working and respondent had not made any seniority list in accordance with law and, consequently, there is a clear violation of Section 6 P of the UP Industrial Disputes Act, 1947.

To adjudicate upon the said question the petitioner was repeatedly asked to submit various documents including the seniority list which could demonstrate that none of the persons junior to the petitioner have been retained while retrenching his services. No document was filed by the petitioners to demonstrate that there was no violation of Section 6 P of the UP Industrial Disputes Act, 1947.

Even in the present writ petition there is no averment assailing the said judgment on the ground that it has wrongly determined the rights of the workman under Section 6 P of the UP Industrial Disputes Act, 1947.

Despite the clear finding recorded by the Labour Court, the petitioner has not filed any documents to demonstrate that the retrenchment was in compliance of the provisions contained in Section 6 P of the UP Industrial Disputes Act, 1947.

This Court after examining the order of learned Tribunal does not find any infirmity requiring interference by this Court.

Learned counsel has relied upon the judgment of ***Mansoor Ahmad vs. Industrial Tribunal (1), U.P. At Allahabad and Others [(2002) 2 UPLBEC 1522]*** to submit that the workman did not adduce any evidence with regard to the violation of Section 6 P of the UP Industrial Disputes Act, 1947.

The Tribunal has duly considered this aspect of the matter and specially the fact that it was contended by the workman that no seniority list was ever prepared by the petitioner which could demonstrate that compliance of Section 6 P has been made and only persons junior have been retrenched adhering to the principle of last come first go. Once the statement of the workman was on record that no seniority list has been prepared by the petitioner and it is in these circumstances that opportunity was given to the petitioner to submit the seniority list and despite the said opportunity no seniority list was filed in support of their objections and, consequently, taking the adverse view of the matter the issue was decided

in favour of the workman.

I do not find any infirmity in the said decision and the judgment as cited by the petitioner would not apply to the facts of the present case.

In light of the above, petition being bereft of merits is accordingly dismissed.

Order Date :- 31.10.2023

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(Alok Mathur, J.)