

Court No. - 33

Case :- WRIT - C No. - 16383 of 2014

Petitioner :- State Of U.P. And Another

Respondent :- Presiding Officer Labour Court And Another

Counsel for Petitioner :- Ms. Suman Sirohi

Counsel for Respondent :- Shyam Narain, Anup Kumar
Srivastava, Gopal Narain, S.C., Sudhanshu
Narain, Vivekanand Yadav

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Prabhakar Tripathi, learned counsel for the petitioners and Mr. Sudhanshu Narain, learned counsel for respondent no.2.

2. Brief facts of the case are that respondent no.2 was appointed in the petitioner- department in October 1984 and he worked up to 17.9.1992. Respondent no.2 was not permitted to work since 18.9.1992. In the year 1993, conciliation proceedings were initiated and failed accordingly State Government has referred the disputed to Labour Court vide order dated 18.8.1994 in exercise of its power under Section 4K of the U.P. Industrial Dispute Act, 1947 hereinafter referred to as Act of 1947. Respondent no.1 registered the aforementioned reference as adjudication case No. 269 of 1994 and notices were issued to the petitioners as well as the respondent no.2. In the aforementioned adjudication No. 269 of 1994, petitioners and respondent no.2 filed their written statement and adduced evidence in support of their cases. The Labour Court vide impugned award dated 28.1.2013 as published on 24.4.2013 reinstated the respondent no.2 with full backwages. Hence this writ petition for the following relief:-

" Issue a writ, in the nature of certiorari and get the award dated 28.1.2013 published on 24.4.2013, passed by respondent no.1 and consequential recovery proceedings initiated under Section 6-H (1) of U.P. Industrial Dispute Act, before Deputy Labour

Commissioner, Gorakhpur quashed."

3. This Court entertained the matter vide order dated 14.3.2014 and granted conditional interim order staying the award with condition that petitioners shall deposit Rs. 1,00,000/- before respondent no.1 and 50% of the deposited amount was ordered to be released in favour of respondent no.2.

4. In pursuance of the interim order dated 14.3.2014, parties have exchanged their affidavits.

5. Learned Standing Counsel for the petitioner submitted that impugned order has been passed in illegal and arbitrary manner. He further submitted that Labour Court has erred law in directing the reinstatement of the workman with full backwages. He further submitted that awarding the full backwages to respondent no.2 is not according to the ratio of law laid down by this Court from time to time. He submitted that Hon'ble Apex Court has held in several cases that mere violation of Section 6-N of the Act of 1947 will not entitle the workman for reinstatement in service. He further placed reliance upon the judgement reported in **2001 (3) SC 326 State of U.P. Vs. Pratam Singh Narsinh Parmar**. He submitted that impugned award passed by Labour Court is liable to be set aside.

6. On the other hand, learned counsel for respondent no.2 submitted that respondent no.2 was engaged in October 1984 and he worked up to 17.9.1992. He further submitted that respondent no.2 was not permitted to work since 18.9.1992. He further submitted that respondent no.2 has rightly been reinstated under the impugned order with full backwages which is correct exercise of jurisdiction by the Labour Court. He further submitted that similar controversy has already been adjudicated by this Court and the writ petition filed by State has been dismissed on merit. He placed the judgement of this Court passed in **Writ C No. 58895 of 2012 State of U.P. Vs. Mahendra** as well as in **Writ C No. 33432 of 2012 Abhimanyu and Others Vs. The Principal Secretary and Others** in order to demonstrate that no interference is required in the matter against the

impugned order.

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that the labour Court under impugned award dated 28.1.2013 as published on 24.4.2013 has reinstated respondent no.2 in service with full back wages and other service benefits.

9. In order to appreciate the controversy involved in the matter, perusal of the relevant portion of the impugned award of labour Court will be necessary, which is as under:

"समक्ष पीठासीन अधिकारी, श्रम न्यायालय, उत्तर प्रदेश, गोरखपुर।

उपस्थित:

श्री सुखवीर सिंह राना पीठासीन अधिकारी

अभिनिर्णय विवाद संख्या **269/94**

श्री भीम यादव पुत्र श्री लालू यादव ग्राम झझवा पो० बैतालपुर जिला देवरिया बनाम **1-रेन्ज** अधिकारी, सामाजिक वानिकी, रुद्रपुर, गौरी बाजार देवरिया **2- प्रभागीय निदेशक,** सामाजिक वानिकी, वन विभाग, देवरिया के मध्य उत्पन्न औद्योगिक विवाद के सम्बन्ध में:

उपस्थिति:

सेवायोजकों की ओर से : कोई नहीं।

श्रमिक की ओर से : श्री एम० के० सिंह अधिकृत प्रतिनिधि।

उद्योग : सामाजिक वानिकी।

जनपद : देवरिया

अभिनिर्णय

दिनांक: जनवरी **28, 2013**

उपश्रमायुक्त, उ०प्र०, गोरखपुर क्षेत्र, गोरखपुर के पत्र सं० **10818-23/जी०आर०सी०पी० 5/93** दिनांक **18-8-94** द्वारा उपरोक्त पक्षकारों के मध्य उत्पन्न औद्योगिक विवाद के न्याय-निर्णयन हेतु संदर्भित इस न्यायालय को संदर्भित किया गया। पक्षकारों के मध्य उत्पन्न औद्योगिक विवाद का विवरण निम्न प्रकार है:-

औद्योगिक विवाद का विवरण

क्या सेवायोजकों द्वारा अपने श्रमिक श्री भीम यादव पुत्र श्री लालू यादव माली/वाचर को दिनांक **18-9-92** से कार्य से पृथक/वंचित किया जाना उचित तथा/अथवा वैधानिक है (यदि नहीं, तो कर्मचारी किस हितलाभ/क्षतिपूर्ति के पाने का अधिकारी है एवं अन्य किस विवरण सहित)"

श्रमिक ने अपने लिखित कथन में कहा कि उसने अक्टूबर **1984** से दिनांक **17-9-92** तक माली के पद पर नियोजित होकर लगातार **240** दिन की सेवा प्रत्येक वर्ष में की है। दिनांक **18-9-92** को उसे कार्य से पृथक/वंचित कर दिया गया। उसके कार्य एवं आचरण के

प्रतिकूल कभी कोई नुटिया आरोप नहीं रहा। उसके द्वारा किया जाने वाला माली का कार्य आज भी विद्यमान है। कार्य से पृथक/वंचित करते समय उससे कनिष्ठ श्रमिकों को काम पर बनाये रखा गया और बाद में नई नियुक्तियां भी की गयी। सेवा से हटाने के समय या पूर्व में उसे कोई नोटिस, नोटिस के बदले वेतन तथा छटनी प्रतिकर प्राप्त नहीं कराया गया। प्रतिष्ठान में वरिष्ठता सूची बनाये जाने का प्राविधान है जबकि कोई वरिष्ठता सूची प्रकाशित नहीं की गयी। उसका माह जुलाई, अगस्त व सितम्बर माह के **17** दिन का वेतन रोक लिया गया जिसका भुगतान उसे आज तक नहीं किया गया है। वादी श्रमिक ने यह बातें शपथपूर्वक दिये गये बयान में कही हैं। उससे सेवायोजक प्रतिनिधि ने जिरह भी की है। वादी द्वारा शपथपूर्वक दिये गये बयान के खण्डन में सेवायोजकों की ओर से कोई प्रलेखीय साक्ष्य प्रस्तुत नहीं किया गया है और मौखिक साक्ष्य से भी खण्डन नहीं किया गया है।

उपरोक्त के अतिरिक्त श्रमिक ने अनुभव प्रमाण पत्र प्रदर्श डब्लू० **1** व प्रदर्श डब्लू० **3** दाखिल किया है। प्रदर्श डब्लू० **1** पर वन-रक्षक विकास क्षेत्र बैतालपुर के हस्ताक्षर से दि. **31.12.86** तिथि अंकित को जारी किया गया है। प्रदर्श डब्लू० **2** वादी श्री भीम यादव द्वारा झझवा जिला देवरिया सा०वा० वन प्रभाग देवरिया के रुद्रपुर क्षेत्र के अन्तर्गत दैनिक वेतन भोगी माली/वाचर के पद पर कार्य करने का माहवारी कार्य का विवरण है जिस पर वन राजि० अधिकारी रुद्रपुर राजि० सामाजिक वानिकी वनप्रभाग देवरिया की मोहर एवं हस्ताक्षर हैं। प्रदर्श डब्लू० **1** व डब्लू० **2** के खण्डन में कोई प्रलेखीय या मौखिक साक्ष्य सेवायोजक की ओर से प्रस्तुत नहीं किया गया है अतः प्रदर्श डब्लू० **1** में दर्शायी गयी परसा डिवाई में वृक्षारोपण में **1984** में दैनिक पारिश्रमिक वृक्षारोपण माली के रूप में **1-10-86** से **31-12-86** तक कार्यरत होने एवं प्रदर्श डब्लू० **2** द्वारा माहवार कार्य दिवसों के आधार पर **240** दिन से अधिक निरन्तर कार्य करना सिद्ध होता है क्योंकि सेवायोजकों ने उक्त कार्य अवधि का खण्डन किसी प्रकार के साक्ष्य से नहीं किया है।

ऐसे भी कोई प्रलेख प्रस्तुत नहीं किये गये हैं कि श्रमिक के विरुद्ध कार्य एवं आचरण की शिकायत के कारण कोई जांच आदि हुई हो।

पर्याप्त अवसर दिये जाने के बाद भी कोई साक्ष्य सेवायोजकों ने प्रस्तुत नहीं किया है।

वादी श्रमिक द्वारा अक्टूबर **1984** से **17-9-92** तक लगातार निरन्तर सेवा करने से उसके द्वारा **240** दिनों से अधिक दिनों की सेवा पूरी करना सिद्ध होता है।

कार्य से पृथक/वंचित करते समय वादी श्रमिक को नोटिस या नोटिस के बदले वेतन या छटनी प्रतिकर मुआवजा का भुगतान न करने के आधार पर उ०प्र० औद्योगिक विवाद अधिनियम **1947** की धारा **6-एन०** के प्राविधानों का उल्लंघन सेवायोजकों द्वारा किया जाना सिद्ध होता है।

इसी प्रकार वादी की सेवा से पृथक/वंचित करने के समय कनिष्ठ श्रमिकों को काम पर बनाये रखने की बात का खण्डन सेवायोजकों द्वारा न किये जाने से उ०प्र० औद्योगिक विवाद अधिनियम **1947** की धारा **6-पी** के प्राविधानों का उल्लंघन किया जाना सिद्ध होता है।

वादी को कार्य से पृथक/वंचित किये जाने के बाद नये श्रमिकों की नियुक्ति प्रतिवादी द्वारा किये जाने का किसी प्रकार से खण्डन न किये जाने से भी उ०प्र० औद्योगिक विवाद अधिनियम **1947** के नियम **6-क्यू** के प्राविधानों का उल्लंघन किया जाना सिद्ध होता है।

अतः उपरोक्त के आधार पर वादी श्रमिक श्री भीम यादव पुत्र श्री लालू यादव माली/वाचर को दिनांक **18-9-1992** से कार्य से पृथक/वंचित किया जाना उचित तथा अथवा वैधानिक नहीं है। वादी श्री भीम यादव अपनी पुरानी सेवा की तारतम्यता के साथ सेवा में बहाल किये जाने का अधिकारी है। सेवायोजक वादी को बैठकी अवधि के बकाया देयों का भी भुगतान करें।

वादी का माह जुलाई, अगस्त व सितम्बर **92** माह के **17** दिन के रोके गये वेतन के भुगतान

के संबंध में सेवायोजक द्वारा कोई प्रलेखीय या मौखिक साक्ष्य प्रस्तुत नहीं किया गया। सेवायोजक इस बात का खण्डन करने में असफल रहे हैं अतः सेवायोजक को आदेशित किया जाता है कि सेवायोजक वादी का माह जुलाई, अगस्त व माह सितम्बर **92** के **17** दिन के रोके गये वेतन का भी भुगतान करें।

ह० अपठनीय

28.1.13

दिनांक जनवरी **28, 2013** (सुखवीर सिंह राना)

पीठासीन अधिकारी

श्रम न्यायालय, उ०प्र०, गोरखपुर"

10. Perusal of finding of fact recorded by labour Court by which respondent no.2 was reinstated in service do not require any interference in exercise of jurisdiction under Article 226 of the Constitution of India.

11. So far as the grant of full back wages is concerned, the perusal of the case law on the point of back wages will be relevant for consideration, which are as under:

"1.AIR 1979 SC 75 (M/s. Hindustan Tin Works Pvt. Ltd., v/s The Employees of M/s. Hindustan Tin Works Pvt. Ltd. And others)

2. [2010 (124) FLR 700] Harjinder Singh v/s Punjab State Warehousing Corporation

3. [2013 (139) FLR 541] Deepali Gundu Surwase v/s Kranti Junior Adhyapak and others

4. [2014 (142) FLR 20] Bhuvanesh Kumar Dwivedi v/s M/s. Hindalco Industries Ltd.

5. [2015 (145) FLR 184] Mackinnon Mackenzie & Company Ltd. v/s Mackinnon Employees Union

6.[2019 LawSuit(SC) 1506] Jayantibhai Raojibhai Patel v/s Municipal Council, Narkhed & Ors.

7. [2022 (175) FLR 544] Armed Forces Ex Officers Multi Services Co-Operative Society Ltd. v/s Rashtriya Mazdoor Sangh (Intuc)"

12. Hon'ble Apex Court in **Deepali Gundu Surwase (supra)** has laid down the principle for grant of back wages. Paragraph nos.33 to 38 will be relevant for perusal, which are as under:

"33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because

there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-a-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

34. Reverting to the case in hand, we find that the managements decision to terminate the appellants service was preceded by her suspension albeit without any rhyme or reason and even though the Division Bench of the High Court declared that she will be deemed to have rejoined her duty on 14.3.2007 and entitled to consequential benefits, the management neither allowed her to join the duty nor paid wages. Rather, after making a show of holding inquiry, the management terminated her service vide order dated 15.6.2007. The Tribunal found that action of the management to be wholly arbitrary and vitiated due to violation of

the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages.

35. The learned Single Judge agreed with the Tribunal that the action taken by the management to terminate the appellants service was per se illegal but set aside the award of back wages by making a cryptic observation that she had not proved the factum of non-employment during the intervening period. While doing so, the learned Single Judge not only overlooked the order passed by the Division Bench in Writ Petition No.8404/2006, but also Rule 33 which prohibits an employee from taking employment elsewhere. Indeed, it was not even the pleaded case of the management that during the period of suspension, the appellant had left the Headquarter without prior approval of the Chief Executive Officer and thereby disentitling her from getting subsistence allowance or that during the intervening period she was gainfully employed elsewhere.

36. In view of the above discussion, we hold that the learned Single Judge of the High Court committed grave error by interfering with the order passed by the Tribunal for payment of back wages, ignoring that the charges levelled against the appellant were frivolous and the inquiry was held in gross violation of the rules of natural justice.

37. In the result, the appeal is allowed, the impugned order is set aside and the order passed by the Tribunal is restored. The management shall pay full back wages to the appellant within four months from the date of receipt of copy of this order failing which it shall have to pay interest at the rate of 9% per annum from the date of the appellant's suspension till the date of actual reinstatement.

38. It is also made clear that in the event of non-compliance of this order, the management shall make itself liable to be punished under the Contempt of Courts Act, 1971"

13. Hon'ble Apex Court in another case of **Allahabad Bank and Others Vs. Avtar Bhusan Bhartiya** in **Special Leave Petition (Civil) No. 9096 of 2019** vide judgement dated 22.4.2022 has ordered for payment of 50% of the back wages considering the earlier case law including **Deepali Gundu Surwase (Supra)**. Paragraph Nos. 36, 37 and 38 of the judgement rendered in Allahabad Bank (Supra) will be

relevant which are as under:-

"36. Therefore, even applying the ratio laid down in various decisions, we do not think that the employee could be granted anything more than what the High Court has awarded.

37. As we have pointed out at the beginning, the total period of service rendered by the Officer-employee before his dismissal from service, was about 15 years, from 1974 to 1989 and he attained the age of superannuation in February, 2013, meaning thereby that he was out of employment for 24 years. The High Court has taken this factor into consideration for limiting the back wages only to 50% and we find that the High Court has actually struck a balance. We do not wish to upset this balance. Therefore, the Special Leave Petition of the Officer-employee is also liable to be dismissed.

38. Accordingly, both the Special Leave Petitions are dismissed, no costs."

14. In the instant matter, the labour Court has found that dismissal of respondent no.2 from service is illegal accordingly ordered for reinstatement with full backwages but considering the entire fact and circumstances of the case, the grant of 50% of the back wages to respondent no.2 appears to be just and proper in the place of full back wages.

15. It is also material that pendency of the instant writ petition before this Court since 2014 will not deprive the respondent no.2 for reinstatement in service because Labour Court has passed the impugned award on 28.1.2013 for reinstatement of respondent no.2.

16. Considering the entire facts and circumstances as well as the ratio of law laid down by Hon'ble Apex Court in ***Deepali Gundu Surwase (Supra)*** and ***Allahabad Bank and Others (Supra)***, the instant petition is ***allowed*** in part. The impugned award dated 28.1.2013 as published on 24.4.2013 passed by respondent no.1/ Presiding Officer, Labour Court U.P. Gorakhpur in Adjudication case No. 269 of 1994 is modified to the extent that respondent no.2 / workman shall be entitled to 50% of his back wages in place of full back wages. The reinstatement part and other consequential service benefit as awarded under the award

dated 28.1.2023 as published on 24.4.2013 is hereby maintained. Petitioners/ corporation is directed to release the arrears of back wages as directed above to respondent no.2 within period of **three months** from today adjusting the amount which has already been paid under the interim order of this Court. The Labour Court is also directed to reinstate the respondent no.2 in service as well as release the deposited amount along with accrued interest in favour of respondent no.2 within period of three weeks from the date of production of certified copy of this order before him which shall be adjusted in final amount payable under the impugned award to the respondent no.2.

17. No order as to cost.

Order Date :- 25.9.2024

Vandana Y.