

Court No. - 6

Case :- WRIT - C No. - 7757 of 2018

Petitioner :- Ganga

Respondent :- Presiding Officer Industrial Tribunal-2 Lko And Ors

Counsel for Petitioner :- Amar Nath Tripathi, Manoj Kumar Sahu

Counsel for Respondent :- C.S.C

(ii) **Case :-** WRIT - C No. - 7755 of 2018

Petitioner :- Shri Ram

Respondent :- Presiding Officer Industrial Tribunal-2 Lko And Ors

Counsel for Petitioner :- Amar Nath Tripathi, Manoj Kumar Sahu

Counsel for Respondent :- C.S.C

(iii) **Case :-** WRIT - C No. - 7756 of 2018

Petitioner :- Rampal

Respondent :- Presiding Officer Industrial Tribunal-2 Lko And Ors

Counsel for Petitioner :- Amar Nath Tripathi, Manoj Kumar Sahu

Counsel for Respondent :- C.S.C

(iv) **Case :-** WRIT - C No. - 7758 of 2018

Petitioner :- Shyamu

Respondent :- Presiding Officer Industrial Tribunal-2 Lko And Ors

Counsel for Petitioner :- Amar Nath Tripathi, Manoj Kumar Sahu

Counsel for Respondent :- C.S.C

(v) **Case :-** WRIT - C No. - 28362 of 2018

Petitioner :- State Of U.P. Thru. Director Agriculture Lucknow And Ors.

Respondent :- Ganga And Anr.

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C., Amar Nath Tripathi, Manoj Kumar Sahu

(vi) Case :- WRIT - C No. - 28387 of 2018

Petitioner :- State Of U.P. Thru. Director Agriculture Lucknow And Ors.

Respondent :- Sri Ram And Anr.

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C., Amar Nath Tripathi, Manoj Kumar Sahu

(vii) Case :- WRIT - C No. - 28393 of 2018

Petitioner :- State Of U.P. Thru. Director Agriculture Lucknow And Ors.

Respondent :- Shyamu And Anr.

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C., Amar Nath Tripathi, Manoj Kumar Sahu

(viii) Case :- WRIT - C No. - 28398 of 2018

Petitioner :- State Of U.P. Thru. The Director Agriculture Lucknow And Ors

Respondent :- Ram Pal And Anr.

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C., Amar Nath Tripathi, Manoj Kumar Sahu

Hon'ble Alok Mathur, J.

1. Since all the aforesaid writ petition arise out of the same judgment, as such, the all the writ petitions are being heard together and are being decided by a common judgment.

2. Heard Shri Amar Nath Tripathi, learned counsel appearing for petitioners in Writ-C Nos. - 7757 of 2018, 7755 of 2018, 7758 of 2018 and 7756 of 2018, learned Additional Standing Counsel appearing for State and perused the material available on record.

3. Learned Additional Chief Standing Counsel appearing for State/petitioners in Writ-C Nos. 28362 of 2018, 28387 of 2018, 28393 of 2018 and 28398 of 2018 and Shri Amar Nath Tripathi, learned counsel appearing for respondents and perused the material available on record..

4. Since all the aforesaid writ petitions are being heard together, inasmuch as, in all the aforesaid matters, the order dated 20.09.2017 passed by the learned Industrial Tribunal, Lucknow has been assailed.

5. Writ-C Nos. - 7757 of 2018, 7755 of 2018, 7758 of 2018 and 7756 of 2018, has been filed by the workmen being aggrieved by the order of the Industrial Tribunal where only compensation of Rs.1,00,000/- has been awarded to them while their prayer is that they should have been reinstated along with full back-wages and other consequential benefits. The State Government has filed Writ-C Nos. 28362 of 2018, 28387 of 2018, 28393 of 2018 and 28398 of 2018 assailing the award dated 20.09.2017 stating that the State Agriculture Farm is not an industry within the meaning of the U.P. Industrial Disputes Act, 1947 and consequently, the Industrial Tribunal should have rejected the claim at the very outset being not maintainable.

6. For the sake of convenience, the factual background, details as well as the status of the parties shall be with reference to Writ-C No. 7757 of 2018.

7. The brief facts leading to the present writ petition are that according to the workmen, petitioner Ganga Prasad was engaged in the month of December 1975 to work as Daily-wager by the Farm Superintendent, State Agriculture Farm Beloeiya, District Sitapur. It is further submitted that the petitioner was appointed on daily-wage of Rs.30/- per day and subsequently when he claimed for enhancement of the wages to

Rs.47 per day, which was the minimum provided wage, his services were illegally and arbitrarily terminated/retrenched. The petitioner had He further claims that he had worked continuously till he was retrenched and his services were terminated on 26.12.1997. He has stated that during the said period he had worked for more than 240 days in each calendar year and the respondents had not followed the mandatory provisions contained in Sections 6 N, 6 P and 6 Q of the U.P. Industrial Tribunal Act, 1947, hence he has pressed his claim for reinstatement along with the back-wages. Notices were issued to the State/respondents while put in appearance before the Labour Court they filed their objections stating that the workmen was not engaged for any fixed period but was appointed on daily-wages. It was further stated that no register is maintained by them with regard to the seniority of the daily wage workers and further stated that there is no post on which the petitioner can claim appointment and hence stated that the relief of reinstatement cannot be passed in favour of the applicant/petitioner.

8. The tribunal had directed the employer/State to produce certain documents with regard to the employment of the workmen by means of order dated 17.07.2002 including the attendance register but despite directions of the Labour Court, no documents were produced by the employer.

9. On behalf of the workmen various list of workmen were produced, which demonstrated that they had worked during the said period. Before the Industrial Tribunal the petitioner had examined himself as DW-1 and stated that he was appointed in December, 1975 and in 1996-97 he was being paid wages at the rate of Rs.30/- per day while at the relevant time the minimum wage was Rs.47 per day. The workmen had requested the Farm Superintendent to give him minimum wages as prescribed and

on his making such a demand, his services were terminated.

10. It is thereafter he contacted the union and subsequently, an application was filed before the Labour Court. He has stated that prior to his termination, the petitioner had moved an application before the competent authority Minimum Wages Act claiming minimum wages for working in the respondents' establishment. The Prescribed Authority of Minimum Wages Act by means of order dated 30.03.2002 allowed the application of the workmen/petitioner and directed the respondents to make payment of minimum wage as well as arrears of minimum wage.

11. Before the competent authority it was demonstrated that the petitioner was working on daily-wages and that had been paid wages at the rate of Rs.30/- per day. The respondents on the other hand had contested the claim of the workmen and did not dispute that though the petitioner is working with the respondents but they had paid him the minimum wage prescribed. No documents were filed by the employer to contest the claim of the workmen and accordingly, it was held that the workmen had worked for 359 days. i.e. 31.10.1996 to 26.12.1997. It has been informed that the order of the Prescribed Authority under the Minimum Wages Act attained finality as the same was not assailed by the respondents before any higher forum. Accordingly, before the Prescribed Authority under the Minimum Wages Act as well as Labour Court, there was no dispute with regard to the employer-employee relationship existing between the workmen and the respondents. It is also not disputed that in the year preceding his retrenchment, he had worked for more than 240 days. This aspect was duly demonstrated before the Labour Court and even a finding in this regard was recorded by the competent authority under the Minimum Wages Act. It is also not disputed

that employer did not comply the provisions of Section 6 N of the Act of 1947 as neither was any notice given prior to his retrenchment nor one month wages in lieu of notice given to the workmen.

12. With regard to the question as to whether the State Agriculture Farm would be an industry or not, the workmen in his statement/oral testimony before the Labour Court had stated that working on the said farm he was involved to look after the crops, which were sown for production of seeds. It is stated that during the Kharif season wheat and pulses were sown while during the Ravi season gram, wheat, barley, (Jau) etc. crops were grown and accordingly submitted that there was work all the year around and from the same it can be inferred that the workmen was working in a systematic activity continuously. The petitioner himself had worked continuously from 1975 till 1997, which is a period more than 21 years. In the said process, in the said farm the high quality of seeds are produced, which are distributed to the farmers for a consideration. Even according to the oral testimony of the workmen, there was ample material to demonstrate that the said farm, which was running under the Agriculture Department of the State is an industry.

13. In support of his submissions, learned counsel for petitioner has relied upon the judgment of the High Court of Gujarat in the case of ***State of Gujarat Vs. Kiritbhai Somabhai Bariya reported in [2006 (109) FLR 770]*** where after considering the various judgments of the Supreme Court, it was held that the Forest Department was a State within the meaning of Section 2 (j) of the ID Act, 1947 and the provisions of U.P. Industrial Disputes Act, 1947 being pari-materia with the provisions of the Central Act, 1947, the said law would be good with regard to its application with regard to the U.P. Industrial Disputes Act,

1947.

14. It was further submitted by learned Standing Counsel while assailing the said award is that the work is not perennial in nature, inasmuch as, the work at the farm is conducted only for 11 months i.e. during the Ravi and Kharif and it was admitted that the petitioner was working for both the cropping seasons for the Kharif and Ravi but submitted that there is gap between the two crops during which no persons are employed and hence the agricultural farm would not fall within the definition of "industry". In this regard despite directions passed by the Industrial Tribunal, no documents were produced by the State while on the other hand, the employer had admitted that the petitioner had worked continuously without break and the same facts were also demonstrated before the competent court under the Minimum Wages Act and consequently, the Industrial Tribunal had rightly decided the said issue in favour of the workmen. This Court also does not find any material in support of the contentions raised by the employer to interfere in the findings recorded by the Industrial Tribunal. Accordingly, the said issue was also decided in favour of the employee.

15. Accordingly, this Court is of the considered view that there is no error in the findings recorded by the Industrial Court that the State Agriculture Farm is an industry within the meaning of Section 2 (k) of the U.P. Industrial Disputes Act, 1947.

16. Lastly it has been submitted by the workmen that after coming to the conclusion that there was violation of Section 6 N of the Industrial Disputes Act, 1997, the logical order should have been reinstatement with full back-wages. As provide in Section 6 Q of the Act of 1947. He has submitted that on the judgments relied upon by the State where compensation has been granted in lieu of back-wages are cases where the employees had worked for a very short period for, merely one

year and consequently, in the said circumstances, the Supreme Court was of the view that considering the fact that the workmen had worked for one year, it would not be equitable to give him back-wages for the long period when the award was finalized by the Industrial Court.

17. In the present case, undisputedly the petitioner had worked since 1975 till his services were terminated in 1997 and has worked for more than 21 years. In the case of ***Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*** reported in ***(2013) 5 SCC 136***, the workmen therein had only worked for eight months from 1.3.1991 to 31.10.1991 and accordingly the Supreme Court in the case of wrongful termination granted compensation of Rs.50,000/-.

18. In the case of ***Harjinder Singh Vs. Punjab State Warehousing Corporation*** reported in ***(2010) 3 SCC 192***, the Supreme Court has held that in all cases of wrongful termination reinstatement cannot be made. It was stated that judicial discretion has to be exercised by the court while granting consequential benefits of wrongful termination. It was stated that where initial appointment was found to be illegal, the Court had held that compensation would be proper remedy.

19. Similarly in cases where it was found that the employee had worked for a very short period of time or one year or less, the Supreme Court has held that reinstatement would be the correct remedy and, therefore, the said judgments are distinguishable on facts.

20. In the present case, there is no dispute with regard to the fact that the petitioner was employed with State Agriculture Farm and had worked for more than 21 years. It is also not contested that the termination was in clear violation of Section 6 N of the Act of 1947 and the State Agricultural Farm is an

industry as per the U.P. Industrial Disputes Act, 1947.

21. In the aforesaid circumstances, this Court is of the considered view that the Labour Court should have awarded reinstatement instead of grant of compensation. Even this Court has also considered the impugned judgment and finds that no reason has been ascribed by the Labour Court for not granting the relief of reinstatement and has granted compensation in lieu thereof.

22. It is for the aforesaid reasons, this Court is of the considered view that the award deserves limited interference only to the extent of relief granted to the petitioners. Accordingly, the relief of granting compensation to the tune of Rs.1,00,000/- by the Tribunal is set aside and the respondents-employer are directed to reinstate the workmen, with effect from the date of their termination, who shall be treated to be in service from the date of his termination and considering the aforesaid facts, they would be entitled for back-wages of 25% of his wages from the date of their termination to the date of reinstatement.

23. In light of the above, writ petitions bearing Writ-C Nos. - 7757 of 2018, 7755 of 2018, 7758 of 2018 and 7756 of 2018 filed by the workmen are allowed and writ petitions bearing Writ-C Nos. 28362 of 2018, 28387 of 2018, 28393 of 2018 and 28398 of 2018 filed by the State are dismissed with the following directions:-

(i) Considering the fact that petitioner Ganga in Writ-C No. 7757 of 2018 at present would be aged around 63 years and may not be suitable to work as daily-wager. It has been informed that had the petitioner been in employment, he would have received somewhere Rs.10,000/- per month and having worked for merely 23 years, he would have been entitled to an amount of nearly Rs.25,00,000/-. Considering that this Court

has already held that petitioners are entitled to 25% of the wages, the back-wages would be somewhere around Rs.7,00,000/- to Rs.8,00,000/-. However, I am of the view that ends of justice would be met by awarding a lump-sum of Rs.5,00,000/- instead of Rs.1,00,000/- as granted by the Labour Court.

(ii) Petitioner Shri Ram in Writ - C No. - 7755 of 2018 was appointed as daily-wage worker on 06.03.1993 and his services were terminated on 29.08.1998. He worked as daily-wage worker for five years and five month. At present he would be aged around 47 years, he shall be reinstated in service and would also be entitled to Rs.5,00,000/- as arrears of back-wages instead of Rs.1,00,000/- as awarded by the Labour Court.

(iii) Petitioner Ram Pal in Writ - C No. 7756 of 2018 was appointed as daily-wage worker on 16.06.1985 and his services were terminated on 20.05.1995. He worked as daily-wage worker for nine years and 11 months. At present he would be aged around 54 years, he shall be reinstated in service and would be entitled 25% of back-wages from the date of termination till the date of reinstatement instead of Rs.1,00,000/- as awarded by the Labour Court.

(iv) Petitioner Shyamu in Writ - C No. 7758 of 2018 was appointed as daily-wage workder on 06.03.1993 and his services were terminated on 01.08.1998. He worked as daily-wage worker for five years and four months. At present he would be aged around 47 years, he shall be reinstated in service and would be entitled 25% of back wages instead of Rs.1,00,000/- as awarded by the Labour Court.

24. Accordingly Writ Petitions bearing Writ-C Nos. 7757 of 2018, 7755 of 2018, 7758 of 2018 and 7756 of 2018 are allowed in terms of paragraph no. 23 (i), (ii), (iii) & (iv).

(Alok Mathur, J.)

Order Date :- 7.2.2024

Virendra