

SUPREME COURT OF INDIA

Parmanand

Vs.

Nagar Palika

(S R Babu, S Variava JJ.)

09.11.2000

ORDER

1. The appellant before us is working in the first respondent- Nagar Palika, Dehradun. He claimed that his services were terminated on 31.10.1987 without any prior notice or information or after holding a domestic enquiry, much less based on any reason and raised a dispute under the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The said dispute was referred to the Labour Court at Dehradun.
2. After notice, the first respondent raised an objection to the jurisdiction of the Labour Court to hear the matter on the ground that it is not an 'industry' for the purpose of the Act and the appellant did not fall within the definition of 'Workmen'. It is also contended that (i) there is a Rule of the Nagar Palika that two brothers cannot be employed to equivalent posts and the appellant's brother was also working in a similar post held by the appellant; (ii) the appellant was a probationer on the date of his termination; he had been appointed on 16.12.1986, placed on probation for a period of one year and his services had been terminated on 31.10.87. Before the expiry of that period his services had been put an end to. Hence the provisions of Section 6-N of the Act would not be attracted. The Municipality also contended that the work of the appellant was not satisfactory during the probation period.
3. The Labour Court examined the matter on all aspects raised before it. It held that the Engineering Department of the first respondent was engaged in an activity which can be termed to be an industry and therefore held that the appellant fell within the definition of the workmen. So far as the termination of services of the appellant on the basis that his brother was also employed, it was noticed that there was no Rule available in the Nagar Palika to terminate such service. Even otherwise, it was held the workman being retrenched should comply with Section 6-N of the Act.

The Labour Court also noticed that the evidence tendered through D.W.-1 (an officer of the Municipality) on behalf of the employer that he himself was not aware whether the appellant's work was satisfactory or not during the probation period. No other material was produced before the Labour Court to show that his services had been terminated on that ground. Therefore, the Labour Court concluded that the appellant was entitled to reinstatement with full back wages and passed an award accordingly.

4. The High Court on a writ petition being presented against that award took the view that the concept of industry should be excluded to the extent the appointments are regulated by a statutory Rules in a Department and relied upon a decision of this Court in Himanshu Kumar Vidyarthi and Ors. v . State of Bihar and Ors. 1997 (4) SCC 391, and further held that the appellant's work had not been found satisfactory, as such, his services were terminated on 31.10.1987 before the expiry of the period of probation Which was in accordance with the Service rules and therefore action of the first respondent could not have been upset by the Labour Court and allowed the writ petition quashing the award made by the Labour Court. Hence this appeal.

5. Shri Bharat Sangal, learned Advocate for the appellant at the very outset pointed out there are several decisions of this Court holding that a municipality except in relation to certain Departments should certainly be treated as an industry for the purpose of the Act. Shri Dinesh Dwivedi, learned senior Advocate for the first respondent submitted that now the municipalities have become constitutional creatures and their position stand elevated to the status of State and they are carrying on certain governmental functions and therefore the decisions rendered earlier are not taking note of this position should not influence us in reaching the conclusion that the first respondent is an industry or not. This aspect need not detain us long for the purpose for which municipality or its activities when brought within the purview of the Constitution was entirely different and such inclusion does not take out of the definition of industry for the activities carried on by that institution is an industry. this Court held in *The Corporation of the City of Nagpur v. Its Employees* 1960 (2) SCR 942 in which activity of Municipal Corporation carried on in any of the Departments except those dealing with assessment and levy of house tax, assessment and levy of Octroi, removal of encroachment and removal and pulling down of dilapidated house, prevention and control of food adulteration and maintenance of cattle pounds, to fall within the definition of 'industry' as arising under the Industrial Disputes Act. This decision was reiterated in *Bangalore Water Supply and Sewage Board v. A Rajappa* 1998 (2) SCC 213. It is further explained by this Court in *Samistha Dube v. City Board, Etawah and Anr.* 1999 (3) SCC 14 with reference to municipalities in State of U.P. In that view of the matter we do not think inclusion of the municipalities in the Constitution by itself would dilute the effect of the decisions referred to by us. Hence we do not think the High court is justified in holding that Nagar Palika is not an industry for the purpose of the Act.

6. So far as the question raised that the appellant's services have been terminated on the basis that he was a probationer does not merit serious consideration for Rule 9 of the service rules of the Nagar Palika has not been complied with before putting an end to his service. We may also as a matter of fact note that no material was made available before the Labour Court to show that the work of the appellant was not satisfactory during the period of probation. On the other hand the sole witness examined on behalf of the Nagar Palika admitted that he is not aware of the fact that the service of the appellant was in any way unsatisfactory. The order putting an end to services of the appellant is also not made available to us to find out as to on what basis his services have been put to an end to. In the absence of any material, we are surprised, as to how the High Court could have reached such a conclusion. On the aspect regarding the siblings being not allowed to work in the same

municipality, no rule is made available but on the other hand the appellant produced material to show that there were several employees on the rolls of the municipalities who are related to one another either as brothers or father and son or of some other manner. In the circumstances, we find none of the reasons given by the municipality have any basis therefore the Labour Court was perfectly justified in setting aside the order of termination and directing his reinstatement with full back wages. We have no hesitation to set aside the order of the High Court and restore that of of the Labour Court. The appeal is allowed with costs quantified at Rs. 10,000/-.