SUPREME COURT OF INDIA

Administrator Kamala Nehru Memorial Hospital

Vs

Vinod Kumar

Civil Appeal No.7908 of 2004

(Arijit Pasayat and Tarun Chatterjee)

08/12/2005

JUDGMENT

ARIJIT PASAYAT, J.

1. This appeal is directed against the judgment of the learned Single Judge of the Allahabad High Court. The learned Single Judge held that the termination of services of the respondent was contrary to the provisions of Section 6(N) of the Uttar Pradesh Industrial Disputes Act, 1947 (in short the 'U.P. Act'). Directions were given for reinstatement with continuity of service and 50% of the back wages from the date of termination of the services till the date of award.

2. Background facts in a nutshell are as follows:

On the basis of a dispute raised by the respondent a reference was made by the State Government to the Labour Court, Allahabad for adjudication of the following question:

"Whether the termination of services of its workman Vinod Kumar, Clerk w.e.f. 22.10.82 by the employer is proper or legal? If no, the benefit/relief the concerned workman is entitled for the other with details?" *

3. The respondent's case as set up in the dispute and as was canvassed before the labour court was that he was employed by the appellant (hereinafter referred to as the 'employer') on 16.9.1980 as a

clerk and had continued till 21st October, 1982 with some breaks. According to him he had worked for 240 days continuously in one calendar year and, therefore, was entitled to the protections of Section 6(N) of the U.P. Act. The Labour Court held that the respondent had not established his claim. It was noticed that the respondent was appointed for a limited period and after the expiry of that period he was removed from job. On the basis of subsequent applications appointments used to be given and he used to set engagement accordingly. He remained in continuous service only for 5 months. Therefore, though he may have worked for 240 days or more during the period of his service he had not remained in continuous service for one year. The labour court found that he was engaged for a special work. Aggrieved by the order of the Labour Court a writ petition was filed by the respondent. The High Court held (without indicating as to which provision it was referring to) that the amendment brought in the Industrial Disputes Act, 1947 (in short the 'Act') is prospective and not retrospective. Reference was made to several decisions of various High Courts to hold that since amendment brought in the Act was prospective, the view taken by the Labour Court that the respondent had not completed 240 days' continuous service in one calendar year suffers from manifest error of law and therefore, was liable to be set aside.

4. In support of the appeal, learned counsel for the appellant submitted that though some changes were introduced in the Act, so for as Section 6(N) of the U.P. Act is concerned the same was not amended and continued as before. The definition of "continuous service" is given in Section 2(g) of the U.P. Act and the same was clearly not applicable in case of the respondent. It was further submitted that the view expressed by the High Court regarding entitlement of respondent under Section 17-B of the Act is contrary to facts.

5. Learned counsel for the respondent on the other hand submitted that reference was made though it was not specifically mentioned by the High Court to Section 2 (oo)(bb) of the Act which was amended and the same was prospective and, therefore, the High Court's view is correct.

6. In order to appreciate rival submission reference to Sections 2(g) of the U.P. Act and Section 25-B of the Act is necessary. The definitions read as follows:

U.P.Act

"Section 2(g): `Continuous Service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry." *

Act

Section 25-B: DEFINITION OF CONTINUOUS SERVICE.

For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

*(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- **

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation: For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which –

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

*(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks." **

7. **In view of the clear definition of the continuous service in Section 2(g) which means uninterrupted service of not less than 240 days in one completed year, the respondent was clearly not entitled to any relief. The interruptions which are excluded while computing the uninterrupted service are set out in the Section itself. They are on account of sickness or authorized leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the workman. Further Section 2(g) provides that worker who during the period of twelve calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed one year of continuous service in the industry. As a matter of fact the Labour Court has found that the respondent had worked for 5 months which is undisputedly less than 240 days. The High Court seems to have adopted the definition given in Section 25-B of the Act, which is clearly impermissible. Definition of "Continuous Service" given in Section 25-B of the Act is different from the definition of the said expression given in Section 2(g) of the U.P. Act. #** By Act 36 of 1964, with effect from 19.12.1964, the definition in Section 25-B was substituted. Prior to that the definition of "Continuous Service" was same in the Act and the U.P. Act. Section 2(eee) of the Act was omitted with effect from 19.12.1964 and changes were introduced in Section 25-B of the Act. But Section 2(g) of the U.P. Act remain unaltered. As per the pre-amended position it was necessary for the workman to continue in service in the 12 calendar months period to have actually worked for at least 240 days. After the amendment the position is different. But the earlier position remains the same so far as the U.P. Act is concerned. That being the case the High Court's judgment is clearly unsustainable and is accordingly set aside.

8. The High Court's conclusions about entitlement of respondent under Section 17-B of the Act is relatable to non-employment and non-receipt of adequate remuneration of the workman. The appellant had adduced ample material to show that the respondent was enrolled as an Advocate in 1983 and was a busy practitioner with decent professional income. It had even given a list of large number of cases in which the respondent had appeared. Without any material to support its conclusions, the High Court observed that *>"because of the compulsions of unemployment he has no option but to continue for a short period as a practising Advocate" $* * (underlined for emphasis). The conclusions are clearly contrary to material on record. The respondent was not entitled to any entitlement under Section 17-B of the Act. However if any amount has already been paid in the peculiar facts of the case, the respondent shall not be liable to refund the same.

9. The appeal is allowed without any order as to costs.