SUPREME COURT OF INDIA

Ghaziabad Development Authority & Anr

Vs.

Ashok Kumar & Anr.

C.A.No.1322 of 2008

(S.B. Sinha and Harjit Singh Bedi JJ.)

15.02.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellant is an authority constituted under the Uttar Pradesh Urban Planning and Development Act, 1973 (Act). It is a Local Authority within the meaning of the General Clauses Act, 1897. For its various projects, it appoints daily wagers on an ad hoc basis. Respondent herein was appointed by the Authority on 1.4.1988 as a Amin. Appellant contends that he was appointed on a periodical basis depending on the order of sanction issued by the State of Uttar Pradesh from time to time. On the premise that the sanction for the said appointment was granted only up to 30.3.1990, he was disengaged from services. An industrial dispute was raised by the respondent. The State made a reference for adjudication thereof by the Presiding Court, Labor Court, U.P., and Ghaziabad which is to the following effect. Whether the disengagement/deprivation, by the employers, of their workman Shri Ashok Kumar s/o Mahipal Singh, Amin from the work with effect from 1.5.1990 is proper and lawful? If not, what benefit/reliefs the workman concerned is entitled to get, along with any other particulars?

3. Before the Labor Court, first respondent contended that since his date of recruitment, i.e., on and from 1.4.1988 till 9.4.1990, he continued to work. It, however, appears that his services had been dispensed with on 1.4.1990. It was urged that as despite the fact that he had worked for more than 240 days in one year, the mandatory requirements of Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947 had not been complied with, the same was illegal and, thus, he was entitled to reinstatement with full back wages. Appellant, however, in his written statement apart from denying and disputing the averments made by the respondent that he had worked for more than 240 days in the year preceding his retrenchment, categorically stated that as the Government did not create any post, no work

from the first respondent could be taken and his services therefore, automatically came to an end after 30.3.1990. The learned Labor Court in its award opined that the respondent No. 1 had worked for more than 240 days in an year and as the requirement of the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947 had not been complied with, he is entitled to be reinstated in service with full back wages. It was, however, directed; He be re-employed accordingly.

4. A Writ Petition was preferred there against by the appellant before the Allahabad High Court. By reason of the impugned judgment, the said Writ Petition has been dismissed.

5. Mr. Mahavir Singh, the learned senior counsel appearing on behalf of the appellant, submitted that the Tribunal and consequently the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the services of the first respondent having been availed only on a periodical basis, it was not necessary for the appellant to comply with the provisions of Section 6-N of the Act. It was furthermore urged that the Tribunal in the aforementioned factual backdrop could not have directed reinstatement of the first respondent. Ms. Tatini Basu, learned counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

6. Although, a contention has been raised in the Special Leave Petition that a statutory authority like the appellant is not an Industry within the meaning of Section 2(k) of the U.P. Industrial Disputes Act, 1947, the same was not pressed.

7. Before us, the offer of appointment has not been produced. Whether Respondent No. 1 continued to work on and from 1.4.1988 in terms of the said offer of appointment or it was renewed from time to time on the basis of grant of sanction thereof by the State of U.P. for specific periods is not known. We would, thus, have to proceed on the basis that the first respondent worked with the appellant authority for the entire period between 1.4.1988 and 31.3.1990. If that period is taken during which the respondent remained in service into consideration for the purposes of applicability of Section 6-N of the U.P. Industrial Disputes Act, there is no doubt whatsoever that the first respondent had worked for more than 240 days in a year from the date of retrenchment. It was, therefore, obligatory on the part of the appellant to comply with the provisions of Section 6-N of the Act. It reads thus:

> "6-N. Conditions precedent to retrenchment of workmen. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until."
>
> (a) The workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice. Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of six months, and

(c) Notice in the prescribed manner is served on the State Government."

8. Section 6-N of the Act unlike Section 25B of the Industrial Disputes Act, 1947 does not provide that working for a period of 240 days in the preceding year would sub serve the purpose. What is necessary under the said provision is working for a period of 240 days in one year. Once, a workman, has been in continuous service for not less than one year before his retrenchment, one months notice in writing indicating the reason thereof or wages in lieu thereof, as also compensation equivalent to fifteen days average pay for every completed year of service or in part thereof in excess of six months is imperative. Proviso appended to clause (a) of Section 6-N of the Act provides that no notice would be necessary to be served, if the retrenchment has been in terms of an agreement which specified a date for the termination of service. The said proviso is not in pari materia with Section 2(oo)(bb) of the Industrial Disputes Act, 1947. Appellant has miserably failed to prove that the services of the first respondent were taken under an agreement providing for a specific date for termination thereof. Even otherwise, the same does not absolve the employer from payment of compensation as envisaged under clause (b) of Section 6-N of the Act. The Labor Court and consequentially the High Court, therefore, in our opinion were correct in holding that the provisions of Section 6-N of the Act had not been complied with.

9. The question which however, arises for consideration is as to whether the Labor Court was justified in awarding the relief of reinstatement with full back wages in favor of the workman. First respondent was admittedly appointed on a daily wage of Rs.17/- per day. He worked for a bit more than two years. It has not been disputed before us that sanction of the State of U.P. was necessary for creation of posts. The contention of the appellant before the Labor Court that the post was not sanctioned after 31.3.1990 by the State was not denied or disputed. If there did not exist any post, in our opinion, the Labor Court should not have directed reinstatement of the first respondent in service. A statutory authority is obligated to make recruitments only upon compliance of the equality clause contained in Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the statutory recruitment Rules, if any, would be void. These facts were required to be kept in mind by the labor court before passing an award of reinstatement.

10. Furthermore, public interest would not be sub served if after such a long lapse of time, the first respondent is directed to be reinstated in service.

11. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent instead and in place of the relief of reinstatement in service. Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be sub served if the appellant is directed to pay a sum of Rs.50,000/- to the first

respondent. The said sum should be paid to the respondent within eight weeks from date; failing which the same shall carry interest at the rate of 12% per annum. The appeal is allowed to the aforesaid extent. However, in the facts and circumstances of this case, there shall be no order as to costs.