SUPREME COURT OF INDIA

U.P. State Electricity Board

Vs.

Laxmi Kant Gupta

C.A.No…..of 2008

(Altamas Kabir and Markandey Katju JJ.)

26.09.2008

JUDGMENT

Markandey Katju, J.

1. Leave granted.

2. This appeal has been filed against the impugned judgment and order dated 20.3.2006 in Civil Misc. Writ Petition No. 11078 of 1997 of the Allahabad High Court.

3. Heard learned counsel for the parties and perused the record.

4. The writ petition in the High Court was filed against the award of the Labour Court IV, Kanpur dated 14.11.1996 (annexure P/4 to this appeal). That award was given on a reference made by the State Government under Section 4-K of the *U.P. Industrial Disputes Act, 1947* regarding the termination of service of respondent, Laxmi Kant Gupta from the service of the appellant.

5. The respondent claimed that he was appointed as Coolie on 16.1.1984 and worked till 15.2.1986, and that his service was then terminated without complying with the provisions of Section 6-N of the *U.P. Industrial Disputes Act*. The appellant, on the other hand, alleged that the respondent was never given a regular appointment.

6. Admittedly, the respondent challenged his termination of service after a delay of about 10 years by approaching the Conciliation Officer only on 14.9.1995. The Labour Court observed that no reason has been given for this inordinate delay of about 10 years in raising this dispute, and on this ground the Labour Court denied back wages to the respondent and granted only re-instatement on the ground that Section 6-N was violated.

7. Learned counsel for the respondent submitted before us that the point of delay in raising the industrial dispute was not taken by the appellant in its written statement before the Labour Court, and hence the said point cannot be urged here.

8. Without going into this submission we are of the view that the impugned judgment of the learned Single Judge of the High Court as well as the award of the Labour Court granting re-instatement deserves to be set aside for the reasons given below.

9. In *U.P. State Brassware Corporation Ltd. & another vs. Uday Narain Pandey*[1], this Court referred to a large number of its earlier decisions on the question as to the relief to be granted to the workman when his termination of service is found to be illegal. It was noted that while the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted should be re-instatement with full back wages. However, as noted in the various decisions referred to in the above decision, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. This Court after discussing various earlier decisions held that the relief to be granted is discretionary and not automatic. It was pointed out in the aforesaid decision of this Court in U.P. Brassware Corporation (supra) that a person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of this Court, probably having regard to the changes in the policy-decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is re-instatement with back wages, and instead the Labour Court can award compensation.

10. The same view was followed by this Court in *Haryana State Electronics Development Corporation vs. Mamni*[2] (vide paragraphs 15 to 17).

11. Thus it is evident that there has been a shift in the legal position which has been modified by this Court and now there is no hard and fast principle now that on the termination of service being found to be illegal, the normal rule is re-instatement with back wages. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case.

12. In the present case, we are informed that the respondent has already received more than Rs. 7 lakhs. This has happened because although the Labour Court in its award dated 14.11.1996 only granted re-instatement without back wages, subsequently, as a result of the interim order of the High Court in the writ petition filed before it, the workman was granted his salary instead of re-instatement as an interim measure. Consequently, as a result of that interim order he has received more than Rs.7 lakhs. Coupled with the facts that the respondent worked for only 2 years (1984-86) as a purely temporary employee and the fact that he raised the industrial dispute before the Conciliation Officer only after 10 years of his termination of service, we are of the opinion that the respondent has already got more than sufficient compensation in this case.

13. Hence, while we are not inclined to quash the reference order on the ground of delay, we allow this appeal and set aside the impugned judgment and order of the High Court as well as the Labour Court to the extent that they grant re-instatement to the respondent, and we hold

that in this case compensation should have been granted instead of re-instatement. In this case the amount already paid to the respondent is more than sufficient compensation for his illegal termination of service, and no further amount need to be paid to him. However, what has already been paid to him should not be recovered from him.

14. The appeal thus stands allowed. No costs.

[1]*JT 2005 (10) SC 344*
[2]*AIR 2006 SC 2427*