Samishta Dube vs City Board, Etawah And Anr on 26 February, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1056, 1999 (3) SCC 14, 1999 AIR SCW 694, 1999 LAB. I. C. 1125, 1999 ALL. L. J. 688, 1999 (1) UJ (SC) 540, 1999 (1) LRI 624, 1999 (4) SRJ 71, 1999 (2) ADSC 257, 1999 ADSC 2 257, 2000 (1) SERVLJ 254 SC, (1999) 2 JT 37 (SC), 1999 UJ(SC) 1 540, (1999) 81 FACLR 746, (1999) 2 SERVLR 51, (1999) 2 UPLBEC 951, (1999) 1 LABLJ 1012, (1999) 1 CURLR 854, (1999) 2 SCT 284, 1999 LABLR 460, (1999) 2 ALL WC 1277, (1999) 1 SCALE 655, (1999) 2 SUPREME 357, (1999) 2 LAB LN 1

Author: M. Jagannadha Rao

Bench: S. Saghir Ahmad, M. Jagannadha Rao

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           CASE NO.:
Appeal (civil)  1279 of 1999

PETITIONER:
SAMISHTA DUBE

RESPONDENT:
CITY BOARD, ETAWAH AND ANR.

DATE OF JUDGMENT: 26/02/1999

BENCH:
S. SAGHIR AHMAD & M. JAGANNADHA RAO

JUDGMENT:
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JUDGMENT 1999 (1) SCR 930 The Judgment of the Court was delivered by M. JAGANNADHA RAO, J. Leave granted.

The appellant who holds a post-graduate degree was appointed as a typist/clerk on 15.12.1987 by the City Board, Etawah, respondent in this appeal. Her services were terminated on 12.4.1988. The appellant raised an industrial dispute and the same was referred to the Labour Court by the State of U.P. under section 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter called the `Act') on 7.9.1991. The Labour Court held that the termination of the appellant's appointment w.e.f. 12.4.1988 could not be termed as invalid but held that, even so, the principle of "last come, first go" applied even in the case of those employed on daily wages and, therefore, passed an award to the effect that in case workmen Junior to the appellant were retained, the appellant must be considered for regularisation by re-appointment on the basis of her seniority. This award was passed on 28.1.1993.

The respondent filed Writ Petition No. 15674 of 1994 in the High Court of Allahabad. The High Court held that the Municipal Board discharged sovereign functions and that the appellant was employed as a clerk/stenographer in the administrative office of the Nagar Palika and though "some activity" of the Municipal Board might amount to an "in- dustry", there was nothing to show that the appellant was employed in connection with any activity that might amount to an `industry. The High Court also held that the appellant could go before the Services Tribunal. The High Court also observed that the appellant had worked only for 3 months and 27 days and her employment had come to an end by virtue of the condition of her appointment. The High Court was of the view that the Labour Court rightly held that the termination was not invalid but that its direction that the appellant should be appointed if any of her juniors were working, was unjustified when there was no finding as to discrimination. It was also held that the question of junior or senior hardly arose in the case of daily-wage appointments. The appointment as an employee in the Municipal Board was regulated by Rules and Regulations and appellant was "admittedly" not appointed to any regular post in accordance with the procedure provided. The High Court, therefore held that the direction issued for appointment of the appellant in case juniors were continued was not legally justified and the Labour Court had no jurisdiction to entertain the dispute. On these grounds, the writ petition of the respondent was allowed and the award was set aside.

The appellant filed this appeal questioning the judgment of the High Court. We have heard the learned counsel on both sides.

On the question whether the Municipal Board could be treated as an "industry" within the meaning of the said word in Section 2(k) of the U.P. Industrial Disputes Act, 1947, learned counsel for the appellant has relied upon the judgment of this Court in Bangalore Water Supply & Sewerage Board Etc. v. A Rajappa & Others Etc., [1978] 2 SCC 213. The question was elaborately gone into by Krishna lyer, J, and this Court approved the decision in Corporation of City of Nagpur v. Its Employees, [1960] 2 SCR 942, where Subba Rao, J. (as he then was) held that, in view of the application of the twin tests, namely, (i) primary and predominant activity test and (ii) the integrated activity test, the Municipal Corporation was an "industry" and that, in particular' the employees in the Education Department, the Health Department and the General Administration Department were to be treated as working in an "industry". It was held in regard to the General Administration Department by Subba Rao (as he then was) (pp. 973-974) as follows :

> "Every big company with different sections will have a general administration department. If the various departments collated with this department are industries, this department would also be a part of the industry. Indeed the efficient rendering of all the services would depend upon the proper working of this depart-ment, for, otherwise there would be confusion and chaos. The State Industrial Court in this case has held that all except five of the departments of the Corporation come under the definition of `industry' and if so, it follows that this department, dealing predominantly with industrial departments, is also an industry'. Hence the employees of this department are also entitled to the benefits of this Act."

The above, observations holding that the General Administration Depart-ment of a Municipal Corporation would be an `industry' were approved in Bangalore Water Supply case. Therefore, all the employees in the General Administration Department would become employees in an "industry" if they satisfy the definition of `wormken' in the statute, they will be entitled to seek a reference to the Labour Court.

Coming to the question whether a clerk/typist could be `workman' within Section 2(z) of the U.P. Industrial Disputes Act, 1947 we may refer to certain cases under section 2(s) of the Industrial Disputes Act. 1947. In M/s. Indian Iron & Steel Co. Ltd. & Another Etc., v. Their Workmen Etc., AIR (1958) SC 130 and Bihar State Board Transport Corporation v. State of Bihar & Others, AIR (1970) SC 1217, a person doing clerical work in the industry was treated as a "workman". The appellant, therefore, falls within the definition of `workman' in section 2(z) of the U.P. Industrial Disputes Act, 1947.

We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25 G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, - in the absence of any agreement between the employer and the workmen in this behalf - the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6(N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as re- quired by Section 6-N. In Kamlesh Singh v. Presiding Officer, [1986] Suppl. SCC 679 in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India v. S. Satyam & Others, [1996] 5 SCC 419 Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6-P of the U.P. Act read with Section 2(z) of the U.P. Act which defines `workman'.

It is true that the rule of `first come, last go' in section 6-P could be deviated from by an employer because the section uses the word `ordinarily'. It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or loss of confidence etc., as held in M/s. Swadesamitran Limited, Madras v. Their Workmen, [1960] 3 SCR

144. But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act.

The High Court was also wrong in thinking that the appellant could go before the State Services Tribunal. Under section l(4)(e) of the U.P. Public Services (Tribunals) Act, 1976, there is a specific bar to the ap- plicability of the said Act to `workmen' as defined in the U.P. Industrial Disputes Act, 1947.

In the result, the High Court was wrong in setting aside the orders of the Labour Court. We accordingly set aside the judgment of the High Court and restore the order of the Labour Court. The said order of the Labour Court will be complied with by respondent within 15 days of the receipt of this order. As the re-appointment was denied from the date of the award, namely, 28.1.1993, the appellant will be entitled to re-appoint-ment and all consequential benefits w.e.f. 28.1.1993 including backwages inasmuch as no attempt has been made by the respondent to contend that the appellant was otherwise gainfully employed. Appeal is allowed as stated above. There will be no order as to costs.