

Uttranchal Forest Development ... vs M.C. Joshi on 23 February, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 921 of 2007

PETITIONER:

Uttranchal Forest Development Corporation

RESPONDENT:

M.C. Joshi

DATE OF JUDGMENT: 23/02/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T [Arising out of S.L.P.(C) No. 9279 of 2006] S.B. SINHA, J.

Leave granted.

Appellant (Corporation) herein is a Corporation incorporated under U.P. Forest Development Corporation Act. It is a successor of the UP Forest Corporation. It engages seasonal workers as and when any requirement arises therefor. Respondent was employed as a daily wager by the Corporation on or about 1.8.1989. His services were terminated on 24.11.1991. He allegedly completed 240 days' of continuous work in a period of twelve months preceding the order of termination. He did not raise any industrial dispute for a long time. He approached the Conciliation Officer on or about 2.9.1996 i.e after a period of about 6 years. Conciliation effort between the parties having failed, a reference was made by the State of Uttranchal for adjudication of the following dispute to the Labour Court.

"Whether dispensation with the services of Shri Mohan Chand Joshi son of Sh. N.B. Joshi, Field Assistant w.e.f. 24.11.1991 by the employer is valid and/or legal? If not, what benefit/damages along with other benefits the workman is entitled for."

By reason of an award dated 28.4.2003, the Labour Court opining that the appellant herein contravened the provisions of Section 6N of U.P. Industrial Disputes Act, 1947 directed the reinstatement of the respondent with 50% of back wages with effect from 9.9.1997. Aggrieved thereby and dissatisfied therewith, a writ petition was filed by the appellant herein which was

allowed in part by reason of the impugned judgment reducing the back wages to 25%.

Ms. Rachna Srivastava, the learned counsel appearing on behalf of the appellant would submit that keeping in view the fact that the respondent was appointed as a daily wager on a temporary basis and that too for seasonal work, the impugned judgment cannot be sustained.

Mrs. Rachana Joshi Issar, the learned counsel appearing on behalf of the respondent, on the other hand, urged that it is a fit case where this Court, having regard to the fact situation obtaining in the case, should not interfere with the impugned judgment. Our attention in this behalf is drawn to an order of the Division Bench of this Court dated 19.7.2004 passed in Regional Manager, U.P.S.R.T.C. & Anr. v. Kamal Kumar [RP No. 1886/2003 in SLP(C) No. 24118 of 2002].

The fact that the respondent was appointed as a daily wager is not in dispute. He had worked with the Corporation for a very short period namely from 1.8.1989 to 24.11.1991. As noticed hereinbefore, an industrial dispute was raised only on 2.9.1996.

The Conciliation Officer purported to have condoned the delay. He could not do so. There is no dispute that the U.P. Industrial Disputes Act does not provide for any period of limitation. But it is now well settled that the relief to which a workman would be entitled to in such a situation would depend upon the facts and circumstances of each case.

We may notice that recently this Court in Employers in relation to the Management of Sudamdih Colliery of M/s. Bharat Coking Coal Ltd. v. Their Workman represented by Rashtriya Colliery Mazdoor Sangh [JT 2006 (1) SC 411] opined :-

"10. So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case."

Although according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6N of the UP Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well- settled by reason of a catena of decisions of this Court that, the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

In Haryana State Electronics Development Corporation v. Mamni [AIR 2006 SC 2427], this Court directed payment of compensation. Similar orders were passed in North-Eastern Karnataka Rt. Corporation v. Ashappa [(2006) 5 SCC 137] and U.P. State Road Transport Corporation v. Man Singh [(2006) 7 SCC 752].

In Man Singh (supra) it was held :-

"7. The respondent admittedly raised a dispute in 1986, i.e. after a period of about 12 years, it may be true that in an appropriate case, as has been done by the Labour Court, delay in raising the dispute would have resulted in rejection of his claim for back wages for the period during which the workman remains absent as has been held by this Court in Gurmail Singh vs. Principal, Govt. College of Education. But the discretionary relief, in our opinion, must be granted upon taking into consideration all attending circumstances. The appellant is a statutory corporation Keeping in view the fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time. i.e. after a period of more than 30 years, to direct reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did no consider these aspects of the matter.

8. Keeping in view the particular facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000 to him. Similar orders, we may place on record, have been passed by this Court in State of Rajasthan v. Ghyan Chand, State of MP vs. Arjunlal Rajak, Nagar Mahapalika (now Municipal Corporation) v. State of U.P., and Haryana State Electronics Development Corporation Ltd. v. Mamni."

The unreported decision of this Court in Regional Manager, U.P.S.R.T.C. & Anr. v. Kamal Kumar (supra) whereupon, Ms. Issar had placed strong reliance is not an authority for the proposition that in each and every case an order of reinstatement is required to be passed. The fact of the said matter is not known. Furthermore it was passed in a Review Petition. It appears that one of the questions which arose for consideration was whether services of a daily wager should be regularized or not and in that situation, while directing that the concerned workman to be reinstated only as a daily wager but case of the workman for regularization was directed to be considered in terms of a purported scheme existing in this behalf.

The legal position has since undergone a change in the light of a Constitution Bench decision of this Court in Secretary, State of Karnataka & Ors. vs. Uma Devi (3) & Ors. [(2006) 4 SCC 1] wherein this Court held that 'State' within the meaning of Article 12 of the Constitution of India is under a constitutional obligation to comply with the provisions contained in Articles 14 and 16 of the Constitution of India.

We are therefore, of the opinion that keeping in view the nature and period of services rendered by the respondent herein as also the period during which he had worked and the fact that he had raised an industrial dispute after six years, interest of justice would be met if the impugned judgments are substituted by an award of compensation for a sum of Rs. 75,000/- in favour of the respondent.

We direct accordingly. This appeal is allowed to the aforementioned extent.

In the facts and circumstances of the case, there shall however, be no order as to costs.