Dhampur Sugar Mills Ltd vs Bhola Singh on 8 February, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1790, 2005 (2) SCC 470, 2005 AIR SCW 1572, 2005 LAB. I. C. 1611, 2005 ALL. L. J. 1259, (2005) 5 ALL WC 3987, (2005) 27 ALLINDCAS 50 (SC), 2005 (27) ALLINDCAS 50, 2005 (3) SRJ 61, (2005) 2 JT 98 (SC), 2005 (2) ALL CJ 1016, 2005 (2) SLT 298, 2005 (2) SCALE 15, 2005 (2) SERVLJ 225 SC, 2005 LAB LR 320, 2005 ALL CJ 2 1016, 2005 SCC (L&S) 292, (2005) 104 FACLR 999, (2005) 1 LABLJ 1084, (2005) 1 CURLR 799, (2005) 1 LAB LN 1069, (2005) 1 SCT 829, (2005) 2 SCJ 58, (2005) 2 SERVLR 313, (2005) 3 ANDHLD 35, (2005) 1 SUPREME 948, (2005) 2 SCALE 15, (2005) 3 ESC 319

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Bench: N. Santosh Hegde, S.B. Sinha

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           CASE NO.:
Appeal (civil)  1262-63 of 2003

PETITIONER:
Dhampur Sugar Mills Ltd.

RESPONDENT:
Bhola Singh

DATE OF JUDGMENT: 08/02/2005

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
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J U D G M E N T S.B. SINHA, J :

The Respondent herein was appointed as a trainee/apprentice in the year 1986 purported to be in terms of a scheme sponsored by the State Government for training the cane growers. According to the Appellant, in the year 1986, 45 such trainees had been interviewed and 11 of the them having been found fit were absorbed in its regular service. The Respondent herein allegedly did not qualify therefor. He along with remaining trainees continued to perform their duties as trainees/apprentices. The scheme sponsored by the State Government having come to an end on 16.11.1987 and no fund therefor having been made available, the services of all the remaining 34 trainees were terminated. The Respondent was paid due compensation as envisaged under Section 6N of the U.P. Industrial Disputes Act. He, however, raised an

> industrial dispute pursuant whereto and in furtherance whereof a notification was issued on or about 13.12.1991 by the Appropriate Government referring the following dispute for adjudication before the Presiding Officer, Labour Court, U.P. Rampur :
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> "Whether the separation/deprivation of Mr. Bhole Singh S/o Shri Sukhdev Singh from the service w.e.f. 16.11.1987 is unjustified and illegal? If yes, then the concerned workman would be entitled to get what relief/benefit and with what details."

Before the Labour Court a contention was raised by the Respondent herein that his services were terminated by the Appellant by way of unfair labour practice as he had raised a purported demand for his regularization in services as also non-payment of minimum wages. He contended that the Appellant had regularized the services of 11 Field Supervisors but he was not. According to him, he was called for interview along with others by a letter dated 7.11.1987. He contended that he had not been absenting with effect from 1.6.1987 as was alleged in the said letter dated 7.11.1987, but despite the same, his services were terminated on 2.6.1987.

The case of the Appellant, on the other hand, is that the services of the Respondent along with the persons similarly situated had been terminated as the scheme sponsored by the State Government had come to an end.

Before the Labour Court the principal contention appears to have been raised by the Respondent herein was non-compliance of the requirements of Section 6N of the U.P. Industrial Disputes Act, which was rejected.

The Labour Court in its award held :

> " On the contrary, the version of the employer is that Mr. Bhole Singh was engaged as trainee in the cane development department. During training period the workman was getting stipend. That in the year 1986 all the candidates were interviewed by the employer all 11 trainees were selected and they were appointed. Thereafter the training scheme came to an end. After the end of the training scheme, requiring trainees were not required. The trainees who could qualify the interview, their arrangement was dispensed with by paying one month's notice pay and 15 days stipend for every completed year of service through cheque on dated 16.11.1987 by way of retrenchment. But workman refused to receive the cheque. Consequently, the cheque of retrenchment compensation was sent by Registered post to workman, which was received by him on dated 23.11.1987. Hence, the services of the workman were terminated as per rules. In addition, it was also stated that workman was never engaged on seasonal a permanent post and he is a trainee, as such he does not fall within the ambit of definition of workman. That there are four trade unions in the industry but no union is interested in the dispute.
>
> Both the parties admit the fact that workman has worked for more than 240 days and it is also admitted that his service was terminated w.e.f. 16.11.1987 and at the time of

> termination of the service, he was paid one month's notice pay and retrenchment compensation @ 15 days stipend for every completed year of service. It has not been objected from the workman side that Employer has not complied with the provisions of sec. 6N only it has been stated that the action has been initiated dramatically and the provision of sec. 6 of the Industrial Dispute Act, has been complied with. But it has not been stated that which provision of sec. 6 has not been complied with. Since the workman has been paid one month's notice pay in lieu of notice and retrenchment compensation, as such the provisions of said section were fully complied with."

Before the Labour Court it was stated by the Respondent himself that no appointment letter was issued in his favour and at the end of the scheme his services were terminated but his contention was that as no appointment letter was issued, his services could not have been terminated, but the same was not accepted by the Labour Court. Another contention which was raised by the Respondent before the Labour Court was that as 11 other trainees had been regularized in services, the impugned order of termination was bad in law as it would come within the purview of definition of 'retrenchment'. The Labour Court in its Award held that the termination of the services of the Respondent was carried out in compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, observing :

> "Hence in my opinion, the said provision has been fully complied with, which has been held by the Honourable Court in the above case. In brief disputed workman was a Trainee and remained in the employment for more than 240 days. He could not qualify the interview. The scheme, under which he was imparting training, was closed. Hence his work was not required. The disputed worker comes within the definition of workman. Since there was no requirement of work for him, the Employer retrenchment has complying in the provisions of Sec. 6N of the said Act. It is the simple matter of retrenchment in which the employer has fully complied with the related provisions. Hence in my opinion, the service of the worker is terminated as per rules and legally."

A learned Single Judge of the High Court, however, in the Writ Petition filed by the Respondent herein questioning the said Award, by reason of the impugned judgment dated 27.9.2001 relying on or on the basis of a decision of the Division Bench of the said Court in Smt. Shipra Ghoshal and Others vs. Secretary, Department of Cane, Civil Secretariat, Lucknow and Others [1990 (60) FLR 870] came to the conclusion that the Appellant adopted unfair labour practice in view of the fact that the Respondent demanded wages of the Supervisory grade and furthermore there could not be any justification for not employing him as others had been absorbed.

The learned counsel appearing on behalf of the Appellant would submit that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration the finding of fact arrived at by the Labour Court that the interview in question had been held in the year 1986 when 45 trainees were interviewed and out of them only eleven were taken in service and services of no other trainee had been regularized after the scheme came to an

end.

Drawing our attention to the letter dated 7.11.1987, the learned counsel would contend that from a perusal thereof, it would appear that the Respondent was asked to present himself for duty as he had been absenting himself w.e.f. 1.6.1987 and not for the purpose of appearing before any selection committee. Our attention was also drawn to the letter of termination dated 16.11.1987 wherein the absence of the Respondent was reiterated and the order of termination was issued on the ground that the training scheme had been withdrawn by the State Government. The learned counsel would urge that a trainee/apprentice has no legal right to be absorbed in regular service of the employer.

The learned counsel appearing on behalf of the Respondent, on the other hand, would support the judgment of the High Court contending that from a perusal of the Award passed by the Labour Court itself it would appear that a contention as regard unfair labour practice on the part of the Appellant herein was raised on the premise that the services of 11 other trainees/apprentices had been regularized whereas the services of the Respondent had not been and, thus, he had been discriminated against.

The Respondent herein admittedly was appointed as a trainee in the Cane Department of the Appellant. From a perusal of the Award of the Labour Court, as has been noticed hereinbefore, it is evident that one of the contentions raised before it was that although his services were terminated at the end of the scheme but as no appointment letter was issued, such termination was illegal. A decision of the Allahabad High Court Shipra Ghoshal (supra) also appears to have been cited wherein it was held that the factum of such termination having been made as the scheme came to end should be mentioned in the order of termination itself. From a bare perusal of the said letter dated 16.11.1987, it would appear that the fact as regard withdrawal of the training scheme indeed had been mentioned therein; the reason for such termination being the withdrawal of the scheme by the State Government. So far as the purported regularization of services of other 11 other trainees by the Appellant is concerned, it is manifest that a plea was raised to the effect by the Appellant herein that it was only in the year 1986, that they, out of 45 trainees, were appointed after an interview was held for that purpose and having been found fit therefor. In the letter dated 7.11.1987 issued to the Respondent by the Appellant, it is stated :

> "You have been absent since 1.6.87. You are notified that on receiving this intimation you must present yourself immediately or by 16th November, 1987 failing which disciplinary steps will be taken against you."

The Respondent herein, therefore, was not asked to appear before the Interview Board on 16.11.1987 as alleged by him. The positive case of the Respondent before the Labour Court was that on receipt of the said letter, he appeared before the competent authority on 16.11.1987, when he contended that he had not been absenting from duty but had been prevented from joining his duties. From the Award of the Labour Court it also does not appear that any statement was made before it by the Respondent to the effect that he had appeared before an Interview Board. Even such a contention does not appear to have been raised at the time of raising the industrial dispute as no reference as regard non-regularization of his services by the Appellant was made.

If the Respondent was appointed in terms of the Apprentices Act, 1961, he will not be a workman, as has been held by this Court in Mukesh K. Tripathi vs. Senior Divisional Manager, LIC and Others [(2004) 8 SCC 387] and U.P. State Electricity Board vs. Shiv Mohan Singh and Another [(2004) 8 SCC 402].

In terms of the provisions of the Apprentices Act, 1961, a trainee or an apprentice has no right to be absorbed in services. It is trite that if the provisions of the Apprentices Act applies, the provisions of the Labour Laws would have no application.

The Respondent advisedly raised the question of applicability of the U.P. Industrial Disputes Act having regard to the provisions of the Apprentices Act but even assuming that he was a workman within the meaning of the provisions thereof, the Labour Court had unhesitatingly came to the conclusion that the statutory requirements for effecting a valid retrenchment in terms thereof had been complied with. A finding of fact has also been arrived at by the Labour Court that the scheme sponsored by the State Government had come to an end.

The High Court, thus, in our opinion committed a manifest error in coming to the conclusion that the Appellant is guilty of commission of unfair labour practice only on the premise that the services of 11 similarly situated had been regularized without taking into consideration the materials placed on records as also the finding of fact arrived at by the Labour Court that the services of such persons had been regularized in the year 1986. The High Court further failed to take notice of the fact that according to the Appellant, the Respondent herein did not qualify for his absorption at that time and, thus, his services continued as apprentice with several other trainees and it was only when the scheme came to an end, the services of all the trainees had been terminated.

When a workman is appointed in terms of a scheme on daily wages, he does not derive any legal right to be regularized in his service. It is now well known that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularization particularly in a case when the workman had not been appointed in accordance with the extant rules.

In Executive Engineer, ZP Engg. Divn. and Another vs. Digambara Rao and Others [(2004) 8 SCC 262], this Court held : :

> "It may not be out of place to mention that completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularization. It is also not the case of the Respondents that they were appointed in accordance with the extant rules. No direction for regularization of their services, therefore, could be issued. [See A. Umarani vs. Registrar, Cooperative Societies (2004) 7 SCC 112] and Pankaj Gupta vs. State of Jammu & Kashmir [(2004) 8 SCC 353] Submission of Mr. Maruthi Rao to the effect that keeping in view the fact that the Respondents are diploma-holders and they have crossed the age of 40 by now, this Court should not interfere with the impugned judgment is stated to be rejected.

[See also Mahendra L. Jain and Others vs. Indore Development Authority and Others JT 2004 (10) SC 1] The decision of the Allahabad High Court in Shipra Ghoshal (supra) stands entirely on a different footing. In that case, a finding of fact as regard factual discrimination against similarly situated persons was arrived at. It was further noticed that the petitioners therein were not appointed for a particular scheme and they had been transferred from one place to another and on that ground it was opined that those who were not appointed in a particular scheme could not be axed out on the ground that their appointments were made in a particular scheme, particularly when there was nothing in their appointment letters to show the same.. The said decision of the Allahabad High Court does not advance the case of the Respondent.

It is now well-settled that even in a case where the services of a workman have been terminated without complying with the provisions of Section 6N of the Industrial Disputes Act, a direction for reinstatement shall not ordinarily be issued, in the event, the termination of services becomes co-terminus with the scheme.

For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.