

U.P. Power Corporation Ltd. & Anr vs Bijli Mazdoor Sangh & Ors on 17 April, 2007

Equivalent citations: 2007 AIR SCW 2776, 2007 (3) AIR JHAR R 201, 2007 LAB IC 2459, 2007 (4) ALL LJ 75, 2007 (5) SCC 755, (2007) 2 CURLR 514, (2007) 113 FACLR 821, (2007) 3 PAT LJR 32, (2007) 3 SCT 475, (2007) 3 SERVLR 589, (2007) 5 SCALE 732, (2007) 3 JLJR 32, (2007) 3 LAB LN 64

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Bench: Arijit Pasayat, Lokeshwar Singh Panta

CASE NO.:
Appeal (civil) 2541 of 2005

PETITIONER:
U.P. Power Corporation Ltd. & Anr

RESPONDENT:
Bijli Mazdoor Sangh & Ors

DATE OF JUDGMENT: 17/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the writ petition filed by the appellants. Challenge in the writ petition was to the Award made by the Industrial Tribunal, Uttar Pradesh, Allahabad (in short the 'Tribunal') in adjudication case No. 168 of 1980.

Background facts in a nutshell are as follows:

Respondent Nos.2 & 3 were appointed as Chowkidars as muster roll employees on daily wage basis in the Fatehpur Sub-station on 1.6.1977. By order dated 17.1.1979, the appellant-Corporation decided that no one will be engaged as casual worker. Accordingly services of respondent Nos.2 & 3 and others were terminated as the construction work at Fatehpur Sub-station was over. Respondent Nos.2 & 3 disputed their termination on the ground that they were not paid the retrenchment compensation. The dispute was referred to the Tribunal in Adjudication Case No.168 of 1980. The Tribunal held that the termination was improper as they had completed

240 days of service and their retrenchment was violative of Section 25(F) of the Industrial Disputes Act, 1947 (in short the 'I.D. Act'), and Section 6N of the U.P. Industrial Disputes Act, 1947 (in short the 'U.P. Act') and they were entitled to be reinstated with effect from 1979. Though there was a prayer for being declared as permanent employee, the Tribunal did not consider that question. Respondent Nos.2 & 3 were reinstated in compliance of the Award dated 17.8.1981.

Respondent No.2 raised another industrial dispute i.e. Adjudication Case No.50 of 1985 claiming that he was a Pump Operator cum Electrician and, therefore, he was entitled to a declaration that he was to be paid salary applicable to the post he was holding. Respondent No.2 filed Misc. Writ Petition No.15509 of 1983 challenging the Award in Adjudication Case No.168 of 1980 on the ground that the second question relating to regularization was not decided. The questions referred read as follows:

"(1) Whether termination of service by employers of Labourers Mohammad Jamil (s/o Shahamat Ulla) and Nand Lal (S/o Ram Kishan Patel) dated 1.2.1979 from Civil Construction Department is correct or legal? If not, then what relief do these labourers are entitled to get and on what basis?"

(2) If the above-stated reference-1 is answered in favour of the labourers then whether the employers should declare the disputed labourer as permanent. If yes, then on what basis?"

Respondent No.2 was again terminated under Section 6 N of the U.P. Act as there was no suitable work to be offered. While another industrial dispute i.e. Adjudication Case No.1 of 1985 was raised. In the said case it was held that termination was illegal but it was also held that he was not a regular employee. Direction was, however, given to consider the possibility of absorbing him on the job of regular nature. In the Adjudication Case No.50 of 1985 it was held that respondent No.2 worked as a casual Chowkidar as against the claim that he was working as Pump Operator cum Electrician. The claim made in that regard was negated by the Tribunal. The Award was not challenged by respondent No.2. Appellants filed writ petition No.17727 of 1985 inter alia challenging the Award dated 9.8.1985 in Adjudication Case No.1 of 1985. The same was subsequently withdrawn in the year 1990. On 1.6.1986 respondent No.2 was reinstated as a Chowkidar. According to the appellants, respondent No.2, after reinstatement, absented from duty illegally for several days. Respondent No.2 again filed Adjudication Case No.106 of 1987. When it was pointed out by the appellants that the issues raised by the claimants were already decided, respondent No.2 withdrew the case. Another Misc. Case No.15 of 1987 was lodged by respondent No.2 claiming wages from the period 1.6.1986 to 31.1.1987. The Labour Court directed the appellants to pay for the said period at the rate of Rs.10/- per day amounting to Rs.1640/- which has been paid. Respondent No.2 filed Case No.5 of 1989 before the Deputy Labour Commissioner for payment of wages. The same was again withdrawn by the claimant. The High Court in W.P. No.15509 of 1983 remanded the matter to the Tribunal to decide whether respondent No.2 was entitled

to regularization which related to Adjudication Case No.168 of 1980. On remand the Tribunal held that after three years of their joining in service, respondent Nos.2 & 3 were deemed to have been regularized. Appellants filed Writ Petition No.4324 of 1991 challenging the said Award of the Tribunal dated 3.9.1990. Respondent No.2 filed a Criminal Contempt against the appellants alleging non-compliance of the Award. Appellants filed a Criminal Misc. Case under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') praying for quashing the proceedings. Respondent No.2 was asked on 23.7.1992 to report for duty as a daily wages Chowkidar. Similar directions were given on 4.1.1993. The Criminal Misc. Application was allowed by the High Court. Respondent No.2 was asked to join the duties which he did not do. The High Court dismissed the CMWP No.4324 of 1991 on the ground that respondent No.2 was entitled to regularization.

In support of the appeal, learned counsel for the appellants submitted that the order of the High Court is clearly untenable being cryptic. In any event in view of the decision in *Secretary, State of Karnataka and Others v. Uma Devi and Others* [2006 (4) SCC 1] the direction for regularization could not have been given. It was pointed out that the Tribunal relied on a decision of this Court which specifically overruled in *Uma Devi's case* (supra). On the other hand learned counsel for the respondent submitted that in *Uma Devi's case* (supra) the powers of the Industrial Adjudicator were not under consideration. There is a difference between a claim raised in Civil Suit or a writ petition and one adjudicated by the Industrial adjudicator. It was submitted that the Labour Court can create terms existing in the contract to maintain industrial peace and, therefore, it can vary the terms of the contract. Therefore, it was submitted that the orders of the High Court do not warrant any interference.

It is true as contended by learned counsel for the respondent that the question as regards the effect of the Industrial Adjudicators' powers was not directly in issue in *Uma Devi's case* (supra). But the foundational logic in *Uma Devi's case* (supra) is based on Article 14 of the Constitution of India, 1950 (in short the 'Constitution'). Though the Industrial Adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularization, same cannot be viewed differently.

The plea of learned counsel for the respondent that at the time the High Court decided the matter, decision in *Uma Devi's case* (supra) was not rendered is really of no consequence. There cannot be a case for regularization without there being employee-employer relationship. As noted above the concept of regularization is clearly linked with Article 14 of the Constitution. However, if in a case the fact situation is covered by what is stated in para 45 of the *Uma Devi's case* (supra), the Industrial Adjudicator can modify the relief, but that does not dilute the observations made by this Court in *Uma Devi's case* (supra) about the regularization.

On facts it is submitted by learned counsel for the appellants that respondent No.2 himself admitted that he never worked as a Pump Operator, but was engaged as daily labourer on daily wage basis. He also did not possess requisite qualification. Looked at from any angle, the direction for regularization, as given, could not have been given in view of what has been stated in Uma Devi's case (supra).

The appeal is bound to succeed and is accordingly allowed but in the circumstances without any orders as to costs.