

Supreme Court of India

Surya Prasad Singh And Anr. vs Labour Court Ii, Kanpur And Anr. on 8 February, 1994

Equivalent citations: (1996) IILLJ 797 SC, 1995 Supp (4) SCC 38

Author: K Singh

Bench: K Singh, J Verma

ORDER Kuldip Singh, J.

1. The appellant was employed as an apprentice with the respondent - corporation. He was on a two years' tenure with effect from November 5, 1981. In March 1982 he was made to work on Tung Machine in 'C' grade job against a clear vacancy which occurred due to the transfer of the incumbent who was working in the said job. The Divisional Manager (Personnel) recommended the case of the appellant for regularisation. The Corporation, however, terminated the services of the appellant on November 5, 1983. The dispute was referred for adjudication under the U.P. Industrial Disputes Act, 1947. The Labour Court by its award dated November 29, 1990 set aside the order of termination, directed the reinstatement of the appellant to the post of Tung Machine operator with back wages and a further direction that he be made permanent with effect from December 17, 1985. The Corporation challenged the award of the Labour Court by way of a writ petition before the High Court. The High Court allowed the writ petition, set aside the award of the Labour Court and upheld the termination of the appellant. This appeal by way of special leave is against the judgment of the High Court.

2. The High Court primarily dealt with the question as to whether an apprentice, undergoing training in an industry, was a workman and entitled to the protection of the Act? The High Court examined the provisions of the Industrial Disputes Act, 1947 (the Act) and also the Apprentices Act, 1961 and came to the conclusion that the appellant, having joined the corporation as an apprentice, was not a workman and as such was not entitled to the protection of the Act.

3. We have heard learned Counsel for the parties. We are of the view that in the facts and circumstances of this case, the High Court was not justified in going into the question as to whether an apprentice is a workman under the Act or not. We are not inclined to go into the said question and leave the same open to be decided in an appropriate proceeding.

4. The learned Counsel for the appellant has taken us through the two documents wherein the Divisional Manager (Personnel) recommended the appellant for regularisation. These documents were relied upon by the Labour Court for reaching the finding that on the date of termination of his services, the appellant was not working as an apprentice but he was working on the Tung Machine. The recommendation dated March 12, 1982 of the Divisional Manager (Personnel) reads as under:

We wanted to draw your kind attention towards the apprentice Shri Surya Prasad Singh, son of Shri S.P. Singh Card No. 753 APP of closing dep. He is hard working, honest and painstaking boy of nice habits. He is now working on Tung Machine in 'C' grade job against clear vacancy which occurred due to transfer of Shri Samiullah T. No. D. 122, vide Memo No. PLR/1E/282/85, dated February 5, 1989. You are requested that his case may please be considered sympathetically and he may please be regularised....

5. Thereafter, on June 25, 1982 the Divisional Manager (Personnel) recommended the case of the appellant for regularisation by stating as under:

Shri S.P. Singh is working against the clear vacancy since the promotion of Shri S.Ullah, T. No. D. 122, vide Personnel Office Memo. No. PCR/15/36/82, dated February 5, 1982.

6. It is thus obvious that with effect from March 1982, the appellant was not working as an apprentice but he was working on the Tung Machine in 'C grade job against a clear vacancy. Relying upon the above quoted two recommendations and other material on the record, the Labour Court came to the conclusion that the appellant was in fact working against a clear vacancy and as such was a workman. The appellant ceased to be an apprentice since he was made to work against a regular vacancy by the corporation. In this view of the matter, it was not necessary for the High Court to have gone into the abstract question of law which did not arise in the facts and circumstances of this case. The High Court, therefore, was not justified in setting aside the award given by the Labour Court.

7. We allow the appeal, set aside the judgment of the High Court and reinstate the appellant in service as directed by the Labour Court. Keeping in view the facts and circumstances of this case, we, however direct that the appellant shall not be entitled to the back wages. The respondent-corporation shall take the appellant into service as directed by the Labour Court. The appellant may report for duty within one month from today. No costs.