

CASE NO.:
Appeal (civil) 1008 of 2008

PETITIONER:
Moti Ram

RESPONDENT:
Krishi Utpadan Mandi Samiti & Another

DATE OF JUDGMENT: 05/02/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO.1008 OF 2008
(Arising out of SLP(C) No.5692/2006)

Leave granted.

Appellant, who belongs to a backward community, was appointed on daily wages in the year 1976 as a Yard Man by Krishi Utpadan Mandi Samiti, Gopiganj, Varanasi, UP, respondent No.1 herein. His services were terminated on 7th April, 1978. Consequent upon a dispute raised, the Labour Court passed an award in the year 1980 directing reinstatement of the appellant with full back wages and with continuity of service. Appellant was then reinstated but was not paid full back wages. Services of the appellant were again terminated in the year 1982 on the alleged ground of misconduct without holding an enquiry. Appellant again raised a dispute. While the same was pending before the labour Court, Director of Mandi Parishad vide letter No. 145(Paripatra)/81-85-806 dated 27th March, 1985 directed regularisation of all daily wagers belonging to backward community with immediate effect. Labour Court by its order dated 30.6.1987 passed an award in favour of the workman-appellant, inter alia, directing his reinstatement with full back wages. Appellant was reinstated on 18.11.1988. Thereafter on 16.2.1994, a request was made by the appellant for regularisation of his services in pursuance of the aforesaid order dated 27th March, 1985. He also raised a dispute before the labour Court seeking regularisation of his services. The following reference was made in the year 1994 by the Government under Section 4A of the UP Industrial Disputes Act, 1947 to the labour Court for adjudication:

"Whether the non-regularization of workman Motiram son of Raghubeer by its employer was improper and or illegal. If yes, then the concerned workman deserves such benefit, from what date and with what other details?"

The Labour Court accepted the reference and vide order dated 6th July, 1995 regularized the services of the appellant on the post of yardman after completion of three years of service i.e. 5.4.1979.

Aggrieved against the order passed by the labour Court dated 6th July, 1995, respondent No.1 filed a writ petition in the High Court which has been accepted by the High Court by its impugned order. Learned Single Judge of the High Court has held that the labour court did not have the jurisdiction and erred in regularising the services of the workman of its own.

That the labour court at the most could have sent the case back to the government requiring it to consider the case of the appellant for regularization in terms of the Government Order No.19/3/79 Karmik-I dated 30th March, 1979 read with letter dated 27th March, 1985. The second ground given by the High Court to set aside the order of the Labour Court is that the

defence of the respondent could not be struck off simply because the respondent had not deposited the cost subject to which the respondent was permitted to file the written statement.

According to the High Court, even if the costs were not paid, the defence could not be struck

off and the costs could be recovered in accordance with law. The High Court has set aside the

award passed by the Labour Court on these two grounds and by noting the fact that appellant had already retired on 01.02.2001 directed that he be paid a sum of Rs.10,000/- as ex-gratia

payment.

Counsel for the parties have been heard.

The filing of written statement was subject to payment of costs. Since the respondent did

not comply with the condition precedent of deposit of costs, the written statement could not

be taken on record. The Labour Court rightly observed that the written statement could not be taken on record/into consideration as the respondent had failed to deposit the costs. The

High Court has erred in reversing the order of the Labour Court on this ground.

The learned Single Judge perhaps is correct in observing that the labour court could not

have ordered regularization of the services of the appellant of its own. The proper course would have been to ask the government to consider the case of the appellant for regularization

of services of workman in accordance with Government order dated 30.3.1979 read with letter dated 27.3.1985.

Counsel for the respondent did not dispute the fact that the Government Order dated 30.3.1979 had been issued to regularize the services of the workmen who had worked for more than one year on a post running for three years and that the other employees had been regularized in pursuance to the aforesaid Government Order dated 30.3.1979 read with letter dated 27.3.1985.

Under the circumstances, we are of the opinion that the proper course would have been to

set aside the order of the labour court and direct the government to consider the case of the

appellant for regularization of his services in terms of the aforesaid instructions issued by

government but appellant could not be non-suited simply because the labour Court, instead of

giving directions to the government to consider the case of the appellant for regularization

, had itself directed regularization of the appellant. In our view, the High Court had fallen into

the same error in which the labour Court had fallen.

Keeping in view the peculiar facts and circumstances of the case, especially the fact that the

appellant-workman had already retired on 1st February, 2001 and without creating a precedent, we direct that the services of the appellant be regularized w.e.f. 5.4.1979 in terms of

Government Order dated 30th March, 1979 read with Government letter dated 27th March, 1985, as had been done in the case of similarly situated employees. We are issuing this direction in the extraordinary circumstance that the appellant is already of 65 years of age and

retired seven years back. It would be unfair to him at this stage to undergo the rigor of pursuing his case before the Labour Court and then before the High Court afresh.

Admittedly, the appellant had been paid all his dues as a daily wager till the date of his retirement. Since, the appellant had already retired on 01.02.2001, we direct that the arrears

of salary as well as the retiral benefits minus the amount already paid be paid to the appellant within a period of three months' from today.

The order of the High Court is set aside and that of the Labour Court is restored.
This decision be not taken as a precedent for any future reference.
The Appeal is disposed of accordingly.

JUDIS