

CASE NO.:
Appeal (civil) 5875 of 2007

PETITIONER:
Mahboob Deepak

RESPONDENT:
Nagar Panchayat Gajraula & Anr.

DATE OF JUDGMENT: 13/12/2007

BENCH:
S.B. Sinha & G.S. Singhvi

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.6506 of 2005)

S.B. Sinha, J.

1. Leave granted.
2. Appellant was appointed as a daily wager on a remuneration of Rs.20/- per day in the services of respondent No. 1 on 30.7.1988. He is said to have been involved in financial irregularities. His services were terminated on and from 16.7.1989. He raised an industrial dispute contending that his services were to be regularized after three months of the joining the services. The said contention was accepted by the Presiding Officer, Labour Court in his award dated 30th November, 2002. On the said premise, the termination of services of the appellant was found to be illegal. It was directed :
\023\005since the date of adopted this award employee Shree Mehboob Deepak s/o Shri Varan Singh shall be reestablished on his post in the investigation of old service and the other facilities or payment of the middle period after discharging date along with which he were obtain in service period should be paid.\024

It is difficult to understand the reasoning of the learned Presiding Officer, Labour Court.

3. The High Court, however, by reason of the impugned judgment passed in the writ petition filed by the respondent herein set aside the said award holding :
\023I have heard learned counsel for the parties, I find that respondent-employee was deployed as a daily wager in Class-III category and he has no right to the post and deployment of daily wager is made purely on temporary basis on day to day basis and respondent-employee could not have been deployed against any class-III post and the appointment is said to have been de hors the rules and daily wagers are not entitled to opportunity of hearing at the time of dispensation of service on the ground of misconduct. Here the award impugned passed by the Presiding Officer, Labour Court did not consider that the termination order dated 16.9.1989 was passed in reference to serious irregularities and misconduct. I find force in the contention of the petitioner. The deployment of daily wagers are made in exigency of work and when there was no work the deployment of daily

wagers is dispensed with without any notice or opportunity of hearing, even non-renewal of appointment in consonance to the terms and conditions of appointment is not illegal. The petitioners have no right to the post after a limited period.\024

4. Ms. Suresh Kumari, learned counsel appearing for the appellant, inter alia, submitted that as the services of the appellant were to be made permanent after three months, the High Court committed an error in passing the impugned judgment, particularly, in view of the fact that other persons similarly situated have been made permanent. In any event, it was urged, as the statutory requirements for valid termination of service have not been complied with, the award of the Presiding Officer should be restored.

5. The High Court, in its impugned judgment, inter alia, took into consideration the purported misconduct committed by the appellant herein. If services were to be terminated on the ground that he was involved in financial irregularities, a departmental proceeding was required to be initiated against him. As indicated hereinbefore, he was asked not to join his duties w.e.f 16.7.1989.

6. Such termination of service, having regard to the fact that he had completed 240 days of work during a period of 12 months preceding the said date, required compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act. An order of retrenchment passed in violation of the said provision although can be set aside but as has been noticed by this Court in a large number of decisions, an award of reinstatement should not, however, be automatically passed.

7. The factors which are relevant for determining the same, inter alia, are:

- (i) whether in making the appointment, the statutory rules, if any, had been complied with;
- (ii) the period he had worked;
- (iii) whether there existed any vacancy; and
- (iv) whether he obtained some other employment on the date of termination in passing of the award.

8. Respondent is a Local Authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a Local Authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularized.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. Appellant was entitled to compensation notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. [See Madhya Pradesh Administration v. Tribhuban, 2007 (5) SCALE 397].

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court judgment is modified by directing payment of a sum of Rs.50,000/- (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from

this date, failing which the same will carry interest at the rate of 9% per annum.

14. The appeal is allowed to the aforementioned extent with costs. Counsel's fee assessed at Rs. 10,000/-.

JUDIS