

NATIONAL THERMAL POWER CORPN.

A

v.

JAWAHAR LAL AND ANR.

MARCH 28, 2007

[DR. ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

B

Labour Laws:

U.P. Industrial Disputes Act, 1947:

C

s.6N—Termination of services of workman—No salary for one month in lieu of notice offered—No retrenchment compensation offered—Held, taking note of the fact that workman was engaged elsewhere gainfully, direction of reinstatement is maintained but without back wages.

Respondent no. 1 was engaged on casual basis as Survey Boy by the appellant-Corporation on 3.10.1977. His services were terminated on 15.2.1981. A reference under section 4-K of the U.P. Industrial Disputes Act, 1947 was made to the Labour Court which held that the worker had completed more than one year of service and requirements of section 6N of the Act, having not been complied with, the order of termination was void. It directed reinstatement of the worker with full back wages. The writ petition of the employer having been dismissed by the High Court, it filed the present appeal.

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Allowing the appeal in part, the Court

HELD: The conclusion by the High Court that the worker had completed more than 240 days continuous service in one calendar year was arrived at without any basis. The finding of the Labour Court that no alternative job was offered, accepted by the High Court, is also contrary to the record. But the finding of the Labour Court and the High Court is to the effect that there was no material to show that salary for one month in lieu of the notice and retrenchment compensation was offered to the workman, which he refused to accept. These are findings of fact and the appellant could not refer to any material to take a contrary view. Therefore, the orders of the Labour Court and the High Court appear to be justified. In the circumstances, taking note

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A of the fact that the worker was engaged gainfully elsewhere, the direction for reinstatement is maintained but without any back wages.

[Paras 9 and 10] [482-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1600 of 2007.

B From the Final Judgment and Order dated 15.03.2005 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 10196 of 1983.

S.K. Dhingra and Shefali Dhingra for the Appellants

Bharat Sangal for the Respondents.

C The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. Leave granted.

D Challenge in this appeal is to the judgment rendered by the learned Single Judge of the Allahabad High Court dismissing the writ petition filed by the appellant.

Background facts in a nutshell are as follows:

E A reference, under Section 4K of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as the 'U.P. Act'), was made to the Labour court, Allahabad (hereinafter referred to as the 'Labour Court'). The following disputes was referred for adjudication "whether termination of services of Sri Jawahar Lal S/o Sri Bapai, Survey Boy on 15.2.1981 by the employer was just and/or legal?"

F According to applicant-Jawahar Lal, he was employed by the present appellant with effect from 3.10.1977 as a Survey Boy and remained in continuance of service till the termination of service. He demanded for permanency stating that he is entitled to be declared permanent as per the existing rule. He claimed that his services were terminated without assigning any reason, without any prior notice or pay or retrenchment compensation and, therefore, there was violation of Section 6N of the U.P. Act. Stand of the present appellant was that the reference was illegal, the workman had not made any demand for re-appointment he had also not preferred any appeal under the Certified Standing Order. He was engaged on casual basis at the rate of Rs.6/- per day when the survey work was necessary and when the survey work was over he was offered another job which he did not accept.

H He was also given notice-pay in lieu of one month notice and retrenchment

compensation which he refused to accept. A

The applicant - Jawahar Lal filed a rejoinder affidavit stating that the appeal can be filed only in respect of orders passed under Rule 20 of the Standing Order. Since he had worked for more than 240 days, observance of the provisions of Section 6N of the U.P. Act was necessary. The Labour Court came to hold that there was no refusal to accept the notice and pay as claimed, the applicant had completed more than one year of service and requirements of Section 6N of the U.P. Act had not been complied with. Accordingly the order of termination was held to be void, it was directed that applicant was to be reinstated with full back wages. A writ petition was filed challenging correctness of the award. B C

In support of the writ petition several points were urged. It was specifically urged that the respondent-Jawahar Lal refused to accept notice-pay or compensation. It was also submitted that he was offered alternative job and that without any basis it was concluded that the applicant-Jawahar Lal had completed more than 240 days' continuous service in one calendar year. The present respondents supported the order of the Labour court before the High Court. The High Court noted that there was no material to prove offer of salary for one month in lieu of notice, retrenchment compensation and the refusal thereof. It was also observed that there was no material to show that alternative employment was offered and that the application had completed 240 days' continuous service in one calendar year. The writ petition was dismissed. D E

In support of the appeal learned counsel for the appellant submitted that the survey work was completed in February 18, 1981. He was offered notice and retrenchment pay and alternative employment were offered on 14.2.1981, which he had refused and therefore retrenchment was done on 15.2.1981. The appellant came to know about the employment of the Jawahar Lal in another concern. The workman on 26.5.1984 admitted his employment. It is submitted that the order of the High Court is vitiated as conclusions, without any foundation, have been arrived at and when the materials on record prove otherwise the High Court should not have come to inferential conclusions. F G

Learned counsel for the respondent supported the order of the High Court.

We find that some of the inferences by the High Court are based on H

- A no material, for example the conclusion that the applicant-Jawahar Lal had completed more than 240 days continuous service in one calendar year. The said conclusion was arrived at without any basis. The Labour Court had also not offered any basis for coming to such conclusion further. The finding of the Labour Court that no alternative job was offered was accepted by the High Court. This is on the face of the material placed on record to show that
- B he was offered alternative employment. The applicant-Jawahar Lal in his counter affidavit before this Court has accepted that the alternative offered was with the contractor, and therefore he did not accept it.

- C But the finding of the Labour Court and High Court is to the effect that there was no material to show that salary for one month in lieu of the notice and retrenchment compensation was offered which Jawahar Lal refused to accept. These are findings of fact and learned counsel for the appellant could not refer to any material to take a contrary view. Therefore, the orders of the Labour Court and the High Court appear to be justified. In the circumstances taking note of the fact that the applicant-Jawahar Lal was engaged gainfully
- D elsewhere, the direction for reinstatement is maintained but without any back wages.

The appeal is allowed to the aforesaid extent with no order as to costs.

R.P.

Appeal allowed.