

UTTARANCHAL FOREST HOSPITAL TRUST

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v.

DINESH KUMAR

NOVEMBER 27, 2007

[DR. ARIJIT PASAYAT AND AFTAB ALAM, JJ.]

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Labour Laws:

Re-instatement—Claimed on the ground that the claimant worked as sweeper in the hospital of appellant for more than one year—Allowed by Labour Court holding that he rendered more than 240 days of service in year preceding the alleged termination,—Reinstatement directed with 50% backwages—Order upheld by High Court—Justification of—Held: Not justified—Documents filed clearly show that the worker was engaged on part-time basis for one hour or few hours and not engaged as daily wager on regular basis and belie his claim that he worked for more than 240 days—U.P. Industrial Disputes Act, 1947—s.6N.

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Respondent raised industrial dispute claiming that he worked as a sweeper in the hospital of appellant from 1-7-1995 to 16-8-1996 and that he was terminated on 17-8-1996 without notice and retrenchment allowance. The Labour Court held that the respondent had rendered more than 240 days of service in the year preceding the alleged termination, and directed his reinstatement with 50% backwages. The order was upheld by High Court.

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In the instant appeal by employer, the appellant challenged the order of the High Court on the ground that the respondent was only working on part time basis, therefore, the question of he having worked for more than 240 days in the year preceding the alleged termination did not arise.

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Allowing the appeal, the Court

A HELD: 1.1. The basic difference between a person who is engaged on a part-time basis for one hour or few hours and one who is engaged as a daily wager on regular basis has not been kept in view either by the Labour Court or by the High Court. Materials were placed before the Labour Court to show that the workman was engaged for doing a
B part-time job and that he had worked for a few days in several months; and that he was paid Rs.35/- when he worked for full day and Rs.5/- when he worked for one hour. The documents filed clearly establish that the claim of respondent of having worked for more than 240 days is belied. [Paras 6 and 7] [576-A, B, C; 575-F]

C 1.2. The stand of the appellant, that the respondent was called for work whenever work was available, and as and when required and that he was not called for doing any work when the same was not available, has been established. The Labour Court itself noted that the workman
D was engaged in work by others also as he was working in the appellants' establishment for one hour or little more on some days. In this view of the matter, inevitably the Labour Court and the High Court were not justified in directing reinstatement with partial back wages.

[Paras 8 and 9] [576-C, D, E]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5423 of 2007.

From the final Judgment and Order dated 2.9.2005 of the High Court of Uttaranchal at Nainital in W.P. No. 530/2004 (M/S).

F Lakshmi Raman Singh for the Appellant.

Ashutosh Bhattacharya, Girdhar G. Upadhyay, Vinita G. Upadhyay, Asha Upadhyay and R.D. Upadhyay for the Respondent.

The Judgment of the Court was delivered by

G DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of Uttaranchal High Court. Appellant had questioned the correctness of the order passed by the Presiding Officer, Labour Court,

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Haldwani, Nainital (in short the 'Labour Court') in the writ petition. A

3. The Claim of the respondent was that he was working as a sweeper in the hospital of the appellant and was appointed on 1.7.1995 and worked up to 16.8.1996. But his services were terminated on 17.8.1996 without any notice and without any retrenchment allowances. A dispute was raised which was referred to the Labour Court for adjudication under Section 6N of the U.P. Industrial Disputes Act, 1947 (in short 'the Act'). The Labour Court held that the respondent was entitled to the benefit of reinstatement and 50% of back wages. The stand of the appellant that the respondent was engaged on a daily wage basis for doing a part time job of sweeping was held to be not acceptable. It was held that the respondent had rendered more than 240 days of service. Before the High Court, the stand of the appellant was that the respondent did not render service for more than 240 days as claimed. His appointment was only on temporary basis and that too for one hour daily. This stand was not accepted by the High Court. B
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4. Learned counsel for the appellant in support of the appeal submitted that voluminous documents were produced to show that the respondent was working on a temporary engagement basis and that too for one hour or some times for a little more than an hour. The question for having worked more than 240 days in the year preceding the alleged termination did not arise. E

5. Learned counsel for the respondent on the other hand supported the order passed by the Labour Court and the High Court. F

6. It is undisputed that the work of cleaning the hospital has been given to a contractor w.e.f. 17.8.1996. Materials were placed before the Labour Court to show that the workman was engaged for doing a part-time job and that he had worked for a few days in several months. The Labour Court itself on consideration of the documents and records produced noted as follows:- G

"It is evident that the workman had worked in August, 1996 - 16 days, July, 1996 - 30 days, May, 1996 - 30 days, April, 1996 - 30 days, March, 1996 - 29 days, February, 1996 - 29 days, H

- A January, 1996 - 31 days, December, 1995 - 31 days, November, 1995 - 20 days (Full), October, 1995 - 19 days (Full), September, 1995 - 25 days (Full) @ Rs. 35/- per day. In addition to this, in November, 1995 – 3 days, October, 1995 - 9 days @ Rs.20/- per day towards part time work and in September, 1995 – 3 days part time @ Rs.5/- per day, had worked.”
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7. The basic difference between a person who is engaged on a part-time basis for one hour or few hours and one who is engaged as a daily wager on regular basis has not been kept in view either by the Labour Court or by the High Court. The documents filed clearly establish that the claim of having worked more than 240 days is clearly belied.

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8. The stand of the appellant that the respondent was called for work whenever work was available, and as and when required and that he was not called for doing any work when the same was not available has been established. The Labour Court itself noted that the workman was engaged in work by others as he was working in the appellants’ establishment for one hour or little more on some days. It is also seen from the documents produced before the Labour Court that whenever respondent was working for full period of work he was being paid Rs.35/- per day and on other days when he worked for one hour he was getting Rs.5/-.

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9. In the aforesaid position, the inevitable conclusion is that the Labour Court and the High Court were not justified in directing the reinstatement with partial back wages.

F 10. The appeal is allowed with no order as to costs.

11. It is made clear that the fact we have allowed the appeal shall not stand in the way of the appellant giving engagement to the respondent on such terms as deemed proper.

G B.B.B. Appeal allowed.