

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No(s).5417/1997

UP Financial Corpn. & Anr.

Appellant(s)

VERSUS

Kiran Kumari Sharma & Ors.

Respondent(s)

(with office report)

WITH CA No.1068/1998

Date: 30-11-2000 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For the Appellant(s) : Mr. G.B. Pai, Sr. Adv.
Mr. Shrish Kumar Misra, Adv.

For the Respondent(s): Mr. JC Batra, Sr. Adv.
Mr. HM Singh, Adv.
Mr. Binay K Das, Adv.
Mr. Anil Hooda, Adv.

Mr. SP Sharma, Adv.
Mr. Ashwani Bhardwaj, Adv.
Mr. Abhishek Atary, Adv.

UPON hearing counsel the Court made the following
O R D E R

L.....I.....T.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

Civil Appeal No.5417/1997 is allowed in part without any order
as to costs and Civil Appeal No.1068/1998 is allwed in terms of the
signed orders.

.SP1

(D.L. Chugh)
Court Master

Chiranjit

(Meena Trikha)
Court Master

Signed orders are placed on the file

.PA

.PL55

.....L.....I.....T.....T.....T.....T.....T.....T.....J
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5417 OF 1997@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

UP Financial Corpn. & Anr.

....Appellants

VERSUS

Kiran Kumari Sharma & Ors.

....Respondents

O R D E R@@
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

The appellant employed in its establishment respondent No.1 Ms. Kiran Kumari Sharma. While she was working as a receptionist it is said that she was asked to take a typing test and when she could not pass the said test, her services were terminated on 26th October, 1985. Thereafter, a dispute was raised by her which was referred to the Labour Court. The Labour Court adjudicated the question referred to it and held that the respondent had been appointed as a receptionist and when she demanded for regularisation and payment of full wages, her services were terminated under the garb of not passing the typing test. The stand of the respondent is that though initially she was appointed as a receptionist her services were terminated and thereafter she was sought to be appointed as a clerk-cum-typist on daily wage basis and such job was offered to her on the condition that she will have to pass the typing test within a period of six months and on her failure to do so, her services would be terminated. The Labour Court ..2/-

- 2 -

noticed that no material was placed before it to show that while she was working as a receptionist whether that employment came to an end or not and whether any necessity to pass in the typing test arose or not. Therefore the Labour Court directed reinstatement with full back wages. Aggrieved by the award of the Labour Court, a writ petition was filed before the High Court which came to be dismissed. Hence this appeal.

In this appeal the contention put-forward on behalf of the appellant is that on the end of the employment as receptionist, she had been offered to pass a typing test within a period of six months and thereafter she will be appointed in the post of clerk-cum-typist. However, it is unfortunate that no evidence was adduced before the Labour Court to support the case put-forward on behalf of the appellants. In the absence of any evidence put-forward before the Labour Court, the Labour Court had no option but to direct re-instatement of the respondent with all consequential benefits. We have gone through the letter dated 21st July, 1984, written by the Managing Director to the Regional Manager which discloses the fact that the respondent had been performing the duties of a receptionist. Whether she continued to do so or not, it is not very clear from the letter and the letter indicates that when she may be ...3/-

- 3 -

appointed as clerk-cum-typist on the daily wage basis. Whether there was an occasion to put her services to an end as a receptionist and to appoint her as clerk-cum-typist is not clear from the letter. In the facts and circumstances we uphold the award passed by the Labour Court as affirmed by the High Court. There is a long lapse of time between the

date of termination of the services of the respondent and in the facts and circumstances of the case it will be appropriate to direct that the respondent be paid fifty per cent back wages and she shall be re-instated with immediate effect. The appeal is, thus, allowed in part accordingly without order as to costs.

.SP1

.....J.@@
BBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBB
(S. RAJENDRA BABU)@@
BBBBBBBBBBBBBBBBBBBB

.....J.@@
BBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBBB
(K.G. BALAKRISHNAN)@@
BBBBBBBBBBBBBBBBBBBB

New Delhi,
November 30, 2000

.PA

.....L.....I.....T.....T.....T.....T.....T.....T.....J
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1068 OF 1998@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCC

U.P. Financial Corporation ... Appellant

VERSUS

Virendra Kumar Tewari and Ors. Respondents

O R D E R@@
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....J

.SP2

The respondent No. 1 (hereinafter referred to as the 'respondent') had been employed on the establishment of the appellant on daily wages for a fixed period between 10.3.1991 to 9.6.1991 and that period was extended from time to time as needed until 10.7.1992. Not being satisfied with his services, ultimately the same was put to an end on 13.7.1992. The respondent raised an industrial dispute which was adjudicated by the Labour Court. The Labour Court took the view that the respondent had worked for a period of more than 240 days and that provisions of Section 6-N of the U.P. Industrial Disputes Act had not been followed in putting an end to his services and therefore, the same was bad. It allowed the claim made by the respondent and directed the appellant to reinstate him w.e.f. 13.7.1992 and to pay back wages for the period till the date of the award. The matter was carried by way of a writ petition to the High Court unsuccessfully. Hence this appeal.

The learned counsel for the appellant relied upon a decision of this Court in 1994 (Suppl.) 2 SCC 745, U.P.@@

State Cooperative Land Development Bank Ltd. Vs. Taz Mulk@@
CC
Ansari & Ors. and contended that on a proper interpretation@@
CCCCCCCCCCCCCCCC

of Section 6-N and proviso thereto the legal effect would be that in case where an employment has been put an end to in terms of the agreement or orders under which he was appointed, then Section 6-N would not be attracted.

Learned counsel for the respondent submitted that the respondent had been employed on the Establishment of the appellant for more than 240 days and during that period, the fact that his work was unsatisfactory at any time earlier was not made known to him but it is only at the time of termination of his services such a view has been taken. Therefore, the action taken by the appellant is not bona fide and is not a termination at all as contemplated in Section 6-N. Therefore, the view taken by the Labour Court is justified and calls for no interference by this Court.

The contention putforth on behalf of the appellant is fully supported by the decision of this Court in Taz Mulk's Case (supra) wherein it was noticed that a mere service of 240 days in a year does not entitle a daily rated worker to regularisation on expiry of term of employment and if there is termination at the end of such term no notice is required as provided under Section 6-N of the U.P. Industrial Disputes Act. Therefore, the award made by the Tribunal

cannot be sustained at all. However, the contention putforth on behalf of the respondent will have to be considered to the extent that the action taken by the appellant is not bona fide as at no stage earlier it had been pointed out that services of the respondent had been unsatisfactory prior to date of termination. It is needless to say that assessment of the work of an employee becomes necessary only when his services have to be continued or confirmed. It is on such occasion the employer will find out as to whether the employee's work is satisfactory or not. That is the exercise that has been done in the present case also. Further, when in terms of the employment if services have been put an end to, Section 6-N will not be attracted is clear, in view of decision of this Court in Taz Mulk's case. Hence the award made by the Labour Court as affirmed by the High Court is set aside and the claim raised by the respondent shall stand dismissed. The appeal is allowed accordingly.

.SP1

.....J.@@
BB
(S. RAJENDRA BABU)@@
BBBBBBBBBBBBBBBBBBBB

.....J.@@
BB
(K.G. BALAKRISHNAN)@@
BBBBBBBBBBBBBBBBBBBB

New Delhi,
November 30, 2000