

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6404_OF 2014
(Arising out of SLP(C) No. 24583 of 2005)

KHADHI & VILLAGE INDUSTRIES COMMISSION APPELLANT(s)

VERSUS

MUNESH & ANOTHER RESPONDENT(s)

WITH

CIVIL APPEAL NO. 6443 OF 2014
(Arising out of SLP(C) No. 7867 of 2006)

KHADHI & VILLAGE INDUSTRIES COMMISSION APPELLANT(s)

VERSUS

SAROJINI DEVI & ANOTHER RESPONDENT(s)

CIVIL APPEAL NO. 6444 OF 2014
(Arising out of SLP(C) No. 7940 of 2006)

KHADHI & VILLAGE INDUSTRIES COMMISSION APPELLANT(s)

VERSUS

KALLU SINGH & ANOTHER RESPONDENT(s)

SLP (C) NOS. OF 2008
(CC NoS. 6525-6530 of 2006)

ROSHAN LAL ETC. APPELLANT(s)

VERSUS

KHADHI AND VILLAGE INDUSTRIES COMMISSION RESPONDENT(s)

SLP (C) NO.30200 OF 2008

Signature Not Verified

ASHA DEVI
Digitally signed by
Sukhbir Paul Kaur
Date: 2014.07.16

APPELLANT(s)

20:06:16 IST

Reason: VERSUS

M/s. SPILINTS AND VNEERS FACTORY KHADI & VILLAGE INDUSTRIES COMMISSION RESPONDENT(s)

Leave granted.

This appeal has been preferred by the appellant against the judgment and order dated 2nd August, 2005 passed by the High Court of Uttaranchal (now Uttarakhand) at Nainital in Writ Petition No. 476(M/S) of 2002. By the impugned judgment, the High Court dismissed the writ petition and upheld the Award passed by the Presiding Officer, Industrial Tribunal, Uttaranchal, Haldwani, Nainital in Industrial Dispute Nos. 63 of 1998, 64 of 1998, 65 of 1998, 66 of 1998, 74 of 1998, 75 of 1998, 76 of 1998 and 77 of 1998.

The factual matrix of the case is as follows:

Respondent no.1 claims to be a daily wager with the appellant-Khadhi and Village Industries Commission (hereinafter referred to as 'the Commission') who was working for more than 240 days in a year. He alleged that after the accidental fire that took place in the office of the Commission on 19 th May, 1990, the employer by Order dated 23rd May, 1990 directed all the daily wagers not to come in the establishment till further orders. It was alleged that their services were terminated in violation of Section 6-N of the U.P. Industrial Disputes Act, 1947. The Labour Court, by impugned Award dated 12th February, 2002 passed in industrial disputes as mentioned above, held the termination of the services of the workers on 23rd May, 1990 by the employer, to be illegal and directed the appellant-Commission to reinstate the workmen. The aforesaid Award has been affirmed by the High Court by the impugned judgment.

The grievance of the appellant is that none of the workmen whose services were terminated worked for 240 days of continuous service in a year and that Section 6-N of the U.P. Industrial Disputes Act, 1947 is not applicable for the employees of the Commission. On the other hand, according to learned counsel for the respondents, all the workers have completed continuous service of 240 days in a year and termination of their services, in the

absence of notice to them, was illegal.

We have heard learned counsel for the parties and perused the records.

It is not necessary to decide the question whether Section 6-N of the U.P. Industrial Disputes Act, 1947 is applicable for the employees of the Commission. Even if it is accepted that aforesaid Section 6-N is applicable, it mentions various condition precedent to the retrenchment of workmen who have completed more than one year under an employer. Section 6-N reads as under:-

"6-N. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a

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date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Government."

In his case before the Industrial Tribunal, the workman Munesh (respondent no.1) claims to have worked for 240 days in a year. It was further stated that on 19th May, 1990 accidental fire broke out in the premises and vide their written order dated 23rd May, 1990, the employer directed all the workers not to come in the establishment till further orders. Further case of the respondent no. 1 was that in the last week of August, 1990 when he contacted the competent officers of the establishment then first time he was told that his services were terminated ever since 23 rd May,1990. In the said petition, neither the date of appointment has been shown nor the nature of appointment has been mentioned. Similar situation is with regard to the other workmen-respondents.

From the impugned Award dated 12th February, 2002, we find

that the Tribunal has not discussed the dates on which one or other workmen were appointed to count the period of one year or 240 days of continuance service in the establishment. To fulfil the condition under Section 6(N) of the U.P. Industrial Disputes Act, 1947, it is to be shown that the workmen employed in the industry have been in continuous service for not less than one year before his retrenchment. The aforesaid fact with regard to any of the workman was not discussed. The date of appointment of workmen were

neither given in their pleading nor was any evidence brought on

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record before the Tribunal to suggest that they were available on a particular date and completed one year's service on a particular day. Exhibit P-1 which was noticed by the Tribunal shows that working days of workers were filed in some other case. But the Tribunal failed to discuss as to who are the workers covered by Exhibit P-1.

The appellant had also taken a specific plea that the workmen moved before the Court after 8 to 10 years delay but the said issue was neither discussed nor determined either by the Tribunal or by the High Court.

The High Court also failed to notice the aforesaid fact and hence erred in dismissing the petition holding that the workmen worked for more than 240 days in a year.

In view of the reasons mentioned above, there is no other option but to set aside the impugned judgment and order dated 2 nd August, 2005 passed by the High Court in Writ Petition No. 476 (M/S) of 2002 and the Award dated 12 th February, 2002 passed by the Presiding Officer, Industrial Tribunal, Uttaranchal, Haldwani, Nainital. We order accordingly.

The appeal is accordingly, allowed.

C.A.No.6443/2014 (@ S.L.P.(C) Nos. 7867 of 2006) and
C.A.No.6444/2014 (@ S.L.P.(C) No.7940 of 2006

Leave granted.

In view of the order passed in Civil Appeal No.6404/2014 arising out of S.L.P.(C) No.24583 of 2005, these appeals are also

allowed. The impugned judgment and order passed by the High Court and the Award passed by the Tribunal are set aside.

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S.L.P.(C) Nos. _____ /2008 (CC Nos. 6525-6530) and
S.L.P.(C) No. 30200 of 2008.

After some arguments, learned counsel for the petitioner sought permission to withdraw these special leave petitions. He is permitted to do so. The special leave petitions are, accordingly, dismissed as withdrawn.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(S.A. BOBDE)

NEW DELHI;
JULY 08, 2014

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ITEM NO.21 COURT NO.6 SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 24583/2005

(Arising out of impugned final judgment and order dated 02/08/2005 in WP No. 476/2002 passed by the High Court Of Uttarakhand At Nainital)

KHADHI & VILLAGE INDUSTRIES COMMISSION Petitioner(s)

VERSUS

MUNESH & ANR. Respondent(s)

WITH
SLP(C) No. 7867/2006
(With prayer for Interim Relief and Office Report)
SLP(C) No. 7940/2006
(With prayer for Interim Relief and Office Report)
S.L.P.(C).....CC No. 6525-6530/2008
(With prayer for and c/delay in filing slp and Office Report)
SLP(C) No. 30200/2008
(With Office Report)

Date : 08/07/2014 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s)
Mr. G.K. Srivastava, Adv.
Mr. Sarwa Mitter, Adv.
For M/s Mitter & Mitter Co.,Adv.

Mr. Dinesh Kumar Garg, Adv.
Mr. Abhishek Garg, Adv.
Mr. Dhananjay Garg, Adv.
Mr. Deepak Mishra, Adv.

For Respondent(s)

Mr. Naresh Kumar, Adv.

Mr. Dinesh Kumar Garg, Adv.
Mr. Abhishek Garg, Adv.
Mr. Dhananjay Garg, Adv.
Mr. Deepak Mishra, Adv.

Mr. G.K. Srivastava, Adv.
Mr. Sarwa Mitter, Adv.
for M/s Mitter & Mitter Co., Adv.

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for M/s Manoj Swarup & Co., Adv.

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

SLP(C) No. 24583 of 2005

Leave granted.

The appeal is allowed.

SLP(C) 7867 of 2006 and SLP(C) No.7940 of 2006

Leave granted.

These appeals are also allowed.

SLP(C) Nos...../2008 (CC Nos.6525-6530) and

SLP(C) No.30200 of 2008

These special leave petitions are dismissed as
withdrawn.

(Sukhbir Paul Kaur)
Court Master

(Usha Sharma)
Court Master

(Signed order is placed on the file)