

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4474 OF 2008  
(arising out of SLP(C)No.11390 of 2006)

STATE OF UTTARANCHAL & ANR.

... APPELLANTS

VERSUS

SHEESH RAM SINGH  
RESPONDENT

...

ORDER

Delay condoned. Leave granted. Heard the learned  
counsel for the parties.

2. The respondent was appointed on daily wage basis in the year 1976. Later he was appointed as a supervisor in the work charged establishment purely on temporary basis on 12.10.1984. When he was working as a work charged supervisor, this Court on 15.07.1985 in SLP(C)Nos. 14205-14212 of 2002 (Kamni Prasad & Ors. vs. Executive Engineer) while dealing with a matter relating to 182 persons appointed earlier to respondent, made the following order :

2

"After hearing learned counsel for the parties, we permit the State Government of U.P. to absorb the 182 persons referred to in paragraph 7 of the Third Additional Counter Affidavit sworn to by Shri Chandra Prakash Jain, Executive Engineer on August 2, 1984 and in order to absorb these 182 persons if it is found necessary to discharge the Junior most 182 persons, the State Government may discharge the Junior-most 182 persons notwithstanding any order already made by this Court. Shri Gopal Budramanium states that if any further vacancy in the cadre of work-charge establishment arises, the remaining persons including the 182 persons to be discharged hereafter would be given preference as stated in paragraph 14(h) of the Additional Counter Affidavit sworn to by Shri Naresh Chandra Jain. He further states that no other new employee would be appointed till

remaining persons in the existing list are absorbed on the basis of their seniority.

If any of the workmen has any grievance regarding the implementation of the scheme, he shall be at liberty to make a representation to the Chief Engineer concerned before making any petition before the court."

In pursuance of the said order the respondent was discharged by order dated 4.9.1985 as no longer required by giving 30 days notice, as one of the juniors who had to make way for seniors.

3

3. Twelve years after such discharge, the respondent raised a dispute that his termination was illegal and for consequential benefits. The Labour Court, Dehradun to which the dispute was referred made an award dated 24.12.1998 holding that the discharge by respondent from service amounted to retrenchment in violation of Section 6 of U.P. Industrial Disputes Act, 1947 and directed that the respondent should be reinstated with full back wages from 3.10.1985 (the date on which he was relieved). The said award was affirmed by the High Court while dismissing the writ petition filed by the appellant-State by order dated 2.12.2005.

4. In the meanwhile, the respondent had also filed an application under Section 33C(2) of Industrial Disputes Act for salary from 1.11.1999 to 30.11.2000 and other amounts. The Labour Court, Dehradun by order dated 7.2.2001 directed the appellants to pay Rs.44,649/-. The said order was upheld by the High Court by order dated 31.8.2005 in W.P. 7052/2001.

5. The said orders dated 2.12.2005 and 31.8.2005 are under challenge in these appeal.

6. The respondent was admittedly borne on the work charged

4

establishment when he was discharged from service such discharge by giving a month's notice was in pursuance of the order of this Court dated 15.07.1985 which required the appellant to absorb 182 persons

by discharging, if necessary, an equal number of junior persons. It is not disputed that the respondent as a junior was discharged by order dated 4.9.1985. The order dated 4.9.1985 specifically stated that it was being issued in pursuance of this Court's order dated 15.7.1985. The order of discharge was therefore valid, justified and legal.

7. The respondent did not challenge the discharge for 12 years. The claim, therefore, virtually became stale. To avoid the challenge being rejected as stale, the respondent contended that a particular direction of this Court in the order dated 15.7.1985 was violated by the appellant and, therefore, he was entitled to be reinstated. According to him this Court had directed that no new employee should be appointed until all the persons who were discharged absorbed on the basis of their seniority; certain persons who were junior to him were absorbed and that violated the order of this Court; and, therefore, he was entitled to be absorbed with consequential benefits.

8. We have carefully considered the contention raised by the respondent with reference to the order of this Court. This Court

5

merely recorded the statement of the learned counsel for the State that if any further vacancy in the cadre of work charged establishment arises, the remaining persons including the 182 persons to be discharged thereafter would be given preference in the appointment. The appellant clearly contended before the Labour Court that the alleged juniors who were given appointment were not appointed or regularised in the work charged establishment, but were appointed against regular vacancies of Class IV posts after undergoing selection process and, therefore, there was no violation of the direction of this Court. There is no finding that Indra Singh and Ranvir Singh whose appointment was the cause for grievance for the respondent to raise a dispute, were not appointed on the regular establishment after undergoing selection process. In the circumstances, the Labour Court and the High Court committed a serious error in directing

reinstatement. We also fail to understand award of backwages in case where there is delay of 12 years in challenging the order of termination. Be that as it may.

9. Consequently, the orders of the High Court dated 2.12.2005 and 31.8.2005 as also the awards of Labour Court dated 24.12.1998 and 7.2.2001 are set aside. Consequently, the direction for reinstatement and payment of back wages stand set aside. The appeal is allowed accordingly.

6

.....J.  
( R.V. RAVEENDRAN )

.....J.  
( LOKESHWAR SINGH PANTA )

NEW DELHI,  
JULY 17, 2008.

7

ITEM NO.1 COURT NO.11 SECTION XV

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11390/2006

(From the judgement and order dated 31/08/2005 in WP No. 7052/2001(M/S) and order dated 2.12.2005 in WP 1149/2001(M/S) of The HIGH COURT OF UTTARANCHAL AT NAINITAL)

STATE OF UTTARANCHAL & ANR.

Petitioner(s)

VERSUS

SHEESH RAM SINGH

Respondent(s)

(With appln(s) for c/delay in filing SLP, permission to file rejoinder affidavit and prayer for interim relief and office report)  
(for final disposal)

Date: 17/07/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Petitioner(s) Mr. S.S. Shamsbery, Adv.  
Mr. P.N. Gupta, Adv.

For Respondent(s) Mr. Ratnakar Dash, Sr. Adv.  
Mr. Manoj Kumar Dwivedi, Adv.  
Mr. Shail Kumar Dwivedi, Adv.

UPON hearing counsel the Court made the following

ORDER

Delay condoned. Leave granted. Heard the learned  
counsel for the parties.

The orders of the High Court dated 2.12.2005 and  
31.8.2005 as also the awards of Labour Court dated 24.12.1998 and  
7.2.2001 are set aside. Consequently, the direction for reinstatement  
and payment of back wages stand set aside. The appeal is allowed in  
terms of the signed order.

8

(PAWAN KUMAR)  
COURT MASTER

(ANAND SINGH)  
COURT MASTER

(signed order is placed on the file)