SUPREME COURT OF INDIA

Ganga Kisan Sahkari Chini Mills Ltd.

Vs.

Jaivir Singh

C.A.No.1827 with 1828 and 1829 of 2005

(Dr. A. Pasayat and Lokeshwar Singh Panta, JJ.)

24.09.2007

JUDGEMENT

Dr. ARIJIT PASAYAT, J.:-

1. In these ap peals challenge is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the writ petitions filed by the appellants. In the writ petitions, chal lenge was to the awards made by the Pre siding Officer, Labour Court (2), Meerut (hereinafter referred to as the 'Labour Court'). By the impugned award, the Labour Court had directed reinstatement of the re spondents-workmen and payment of back wages and retaining allowance. The Labour Court's awards were in relation to the refer ences made under the Industrial Disputes Act, 1947 (in short the 'Act'). Reference in all these cases related to the claim for re instatement and back wages to which the concerned workmen were entitled to. The claim was founded on the basis that termination of services in each case was illegal.

The reference reads as follows (by way of sample) :

"Kya Sewayojako Dwara Apne Shramik Jai Veer Singh (Putra Shri Ram Lal), P.H. Recorder Ki Sewae Dinank 6.3.1985 se Samapt Kiya Jana Uchit Tatha/Athwa Vaidhanik Hai? Yadi Nahi, to Sambandhit Shramik Kya Labh/Anutosh (relief) Pane Ka Adhikari Hai, Tatha Kisi Anya Vivran Sahit?"

2. The workmen claimed that they were permanent appointees and the orders of termination were contrary to the provisions of the U.P. Standing Orders.

3. The appellants' case was that it was a seasonal factory which commenced its trial season only in the year 1984-85 and cer tain persons were taken as casual employ ees on daily wage basis and they did not have any lien on any permanent or seasonal post as the factory was to commence pro duction after the trial season 1984-85 was over after the establishment of the sugar factory.

4. It was submitted that this was done to ascertain whether the sugar factory started proper functioning of its first season from the year 1985-86. Respondent-workman was engaged in stop-gap arrangement only for the trial season after inviting applications from the public at large, in which respon dent concerned was not selected. Said re spondent joined the sugar factory on 16th November, 1984 and his services were dis pensed with on 6.3.1985 and by any stretch of imagination he could not have completed 240 days of services in one calendar year and as such the provisions of Section 6-N of the Act did not apply. Concerned respon dent had not filed any appointment letter to show that his appointment was made against any permanent post. As noted above, the Labour Court directed reinstate ment with back wages.

5. The award was assailed in writ peti tion on the grounds that (1) the Labour Court has travelled beyond the terms of reference by framing issue No. 1 as the nature of appointment was neither subject matter of ref erence nor the finding given by it on issue No. 1 was correct. (2) There was no evidence on record that the respondent was a work man and was entitled to the protection un der the Act. (3) There was no appointment letter filed by the workman, which could show that respondent was not engaged in the trial season. Though it was disbelieved by the Labour Court that appointment of the workman was against a permanent post, yet he was granted the relief of reinstatement with back wages and as such the award can not be sustained.

6. After receiving notice from the Tahsildar asking payment of the back wages to the concerned workmen the writ petitions were filed. The averment was that they had not received any order of Deputy Labour Commissioner nor any citation in pursuance thereof. The appellant came to know for the first time about recovery on receipt of the letter dated 15.5.1992. The workmen dis puted the stand of the employer that they had not completed 240 days. Sugar facto ries are all of seasonal nature and accord ing to the Standing Orders applicable in re spect of sugar factories, the period of

120 days is required. The Labour Court recorded a finding that the workmen were appointed on the posts in the relevant season during the period from 16.11.1984 to 5.3.1985.

7. With reference to U.P. Payment of Re taining Allowances to Unskilled Seasonal Workmen of Sugar Factories Order, 1972 (in short 'Sugar Factories Order'), it was held that the workmen were entitled to be rein stated. The findings in this regard recorded by the Labour Court were affirmed by the High Court.

8. In support of the appeals, learned counsel for the appellant submitted that ap proach of the High Court is factually and legally wrong. Even if it is accepted that the period is 120 days, the workmen were not entitled to any relief. They admittedly worked for 109 days. The nature of appointment was not the subject-matter of reference and, therefore, the conclusion of the Labour Court, as affirmed by the High Court that the workmen were entitled to be absorbed on permanent basis and re-instated with back wages, was clearly erroneous.

9. It was wrongly held by the High Court that it was the employer to show the nature of appointment.

10. Learned counsel for the respondents in the written submissions filed supported the orders of the Labour Court and the High Court.

11. We find that the Labour Court and the High Court have completely lost sight of the settled position in law. In Batala Co op. Sugar Mills Ltd. v. Sowaran Singh (2005 (8) SCC 481) it was held as follows : 2005 AIR SCW 5514

"8. We find that the High Court's judgment is unsustainable on more than one count. In Morinda Co-op. Sugar Mills Ltd. v. Ram Kishan and Ors. (1995 (5) SCC 653) it was observed as follows :
1995 AIR SCW 4131

"4. It would thus be clear that the respon dents were not working throughout the sea son. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessa tion would amount to retrenchment. Since it is only a

seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Sec tion 2(oo) of the Act. Under these circum stances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all work men engaged during the seasons enumer ated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exi gency of work."

12. It was accepted that the workmen belonged to the seasonal category. In the claim petition and the pleadings it was urged that they were permanent workmen. The High Court noted that the workmen were not permanent employees. It was further noted that they failed to establish the na ture of their appointment. No appointment orders were filed. It came to an abrupt con clusion that the burden of proof lay on the employer to establish the nature of appoint ment. The conclusion is clearly contrary to law. The Labour Court found that the work men were appointed to posts which contin ued for the whole season and they were ap pointed on seasonal posts. After having ar rived at this conclusion, the Labour Court held that the workmen were entitled to be reinstated.

13. It is interesting to note that the High Court itself noted that the appointment of the workmen was not permanent as the per manent workmen have to complete their probationary period. There was no averment that the workmen had completed their probation period. Undisputedly, 1984-85 was the trial season. It is to be noted that the High Court referred to Rules 4 and 6. They read as follows :

"4. Eligibility for retaining allowance- (i) The above retaining allowance shall be paid to those unskilled seasonal workmen who have or would have worked but, for illness or any other unavoidable cause, in a factory during whole of the second half of the last season preceding, provided that labour em ployed by or through contractors shall be excluded for purposes of this order.

6. Provision not to apply on new facto ries- The provisions of this order shall not apply to new factories commencing crush ing from 1971-72 or thereafter for a period of three seasons including the trial season."

14. Above being the position, the orders of the Labour Court and the High Court are set aside. The appeals are allowed with no order as to costs.

Appeals allowed.