SUPREME COURT OF INDIA

U.P.C.U.E.F. Ltd.

Vs.

Cane Commissioner & R.C.C.S.

C.A.No.2727of 2008

(Tarun Chatterjee and Harjit Singh Bedi,JJ.)

10.04.2008

JUDGMENT

Tarun Chatterjee, J.

SLP(C) No.16536 of 2005

1. Leave granted.

2. This is an appeal by special leave against the judgment and order dated 26th of April, 2005 of the High Court of Judicature at Allahabad in CMWP No. 33014 of 1993 dismissing the writ petition of the appellant filed against the orders dated 17th of May, 1993 and 14th of July, 1993 passed by the Cane Commissioner and Registrar Cooperative Cane Societies U.P., Lucknow (respondent No. 1) and the Special Secretary, Sahkari Ganna Vikas Samiti (respondent No.3) respectively.

3. The relevant facts leading to the filing of this appeal are as under. The appellant is a registered Trade Union of the workmen employed by Sahkari Ganna Vikas Samiti Ltd, Shamli, respondent no. 4 herein. Before the High Court, one Late Shri. Niranjan Singh was the writ petitioner No. 2 along with the appellant and was a permanent seasonal clerk of the respondent No. 4 but he expired during the pendency of the writ petition. U.P. Cane Cooperative Service Regulations, 1975 (in short "the Service Regulations, 1975") were framed under section 122 of the U.P. Cooperative Societies Act, 1965 which superseded the Cane Cooperative Service Rules, 1963. These regulations provide for the recruitment, emoluments, terms and conditions of service etc. of the employees, permanent as well as seasonal, of the Cooperative Cane Development Union or Ganna Sahkari Vikas Samitis established in the State of UP for purchase of sugar from its sugar growing members for supply to various sugar factories. Under the Service Regulations, 1975, "Crushing Season" was defined in Regulation 2(n) as follows:"Crushing season means, the period as defined in U.P. Sugarcane (Regulation of Supplies and Purchase) Act, 1953, U.P. Act No. XXIV of 1953"

Section 2(i) of the U.P. Sugarcane (Regulation of Supplies and Purchase) Act, 1953 in turn defines 'Crushing Season' as follows:"Crushing Season means the period beginning on the 1st October in any year and ending on 15th July next following." The Cane Commissioner of Cooperative Cane Societies, Uttar Pradesh by an order dated 17th of May, 1993 replaced the definition of "Crushing Season" as provided in the Service Regulations, 1975 with the following definition: -

> "Crushing season means the period commencing from the date when the crushing of sugarcane in concerned sugar factories commences till the date when crushing ends."

It is the case of the appellant that due to this amendment, the length of the employment of the seasonal workmen and also their wages was affected. Further, all the seasonal workmen were placed in the same position as prior to 1975 regulations, which made their employment at the whims and fancies of the employer exposing the workmen to all vulnerable tactics of the employer. Since a lot of work is required to be done before actual crushing starts and comes to an end, like management of movement of sugarcane, extension of loans to the cane growers, supply of fertilizers, recovery of loans, etc. hence employment of seasonal workers could not be made limited to the crushing period only. On these grounds, the appellant filed a writ petition before the High Court of Allahabad challenging the order dated 17th of May, 1993 and the order dated 14th of July, 1993 whereby the services of Late Shri. Niranjan Singh (writ petitioner no. 2 before the High Court) were terminated. The High court, as noted herein earlier, rejected the writ petition of the appellant. It is this order of the High Court, which is impugned in this appeal in respect of which leave has already been granted.

4. The main questions that need to be decided in this appeal are: -

> "i) Whether it was mandatory to give notice under Section 4-I of the U.P. Industrial Disputes Act, 1956 or Section 9A of the Industrial Disputes Act, 1956 before passing the order dated 14th of July, 1993 altering the conditions of service of the appellant on the basis of the order dated 17th of May, 1993.
>
> ii) Whether the respondent no. 1 is vested with the power to frame regulations on service conditions and further the power to amend them under Section 122 of the U.P. Cooperative Societies Act, 1965."

5. The learned senior counsel for the appellant Mr. Brijender Chahar vehemently argued before us that the change of the definition of "Crushing Season" without any reasonable and justifiable cause is not only arbitrary but also amounts to change of service conditions of the employees to their detriment, which is not permissible under law and in any case, the same could not be done without observing the principles of natural justice. The learned senior counsel further contended before us that the action of the Cane Commissioner was contrary to the provisions of Section 4-I of the U.P. Industrial Disputes Act, 1956 inasmuch as no notice of change was given to the employees. The learned counsel for the respondents on the other hand contended that mere change in the definition of the term "Crushing Season" in the Service Regulations, 1975 would not in any manner adversely affect the appellant because

earlier also, there had been retention in service only during the period for which the sugar factory had actually operated and in no season were they retained in service after expiry of the aforesaid period.

6. While dismissing the writ petition of the appellant, the High Court made the following findings: -

> "It has been submitted on behalf of the petitioner that no employer can change the service condition applicable to the workmen as is specified in the Third Schedule. The Court has perused the Third Schedule and after perusal of the Third Schedule it is clear that it deals regarding mode of payment, contribution paid or payable by the employer, compulsory and other allowances, hours of work and rest intervals, leave, starting alteration or discontinuance of shift working, classification by grades, withdrawal or privilege, introduction of new rules of discipline, rationalization or improvement of plant, any increase or reduction in number of persons employed. The Third Schedule does not talk regarding the change of service condition. Therefore, in my view, the only contention raised on behalf of the petitioner is not applicable. The order of the respondent in any way is not covered under the provisions of 4-I and the Third Schedule. As no further point has been argued and the amendment does not call for any change in the service conditions of the petitioner therefore, I am of the view as submitted by the petitioner that no notice was required."

7. Having heard the learned counsel for the parties and after examining the judgment of the High Court and other materials on record including the relevant provisions, as mentioned herein earlier, we are of the view that this appeal deserves to be allowed and the order of the High court set aside for the reasons stated hereinafter.

8. Let us deal with the first question, as noted herein earlier, for our consideration. Section 4-I of the U.P. Industrial Disputes Act provides for Notice of Change' and reads as under: -"4-I Notice of Change No employer who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Third Schedule, shall effect such change

> ‘‘a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> b) within twenty-one days of giving such notice."
>
> The Third Schedule provides as under: -
>
> "The Third Schedule (See Section 4-I)
>
> CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

1. Wages including the period and mode of payment.
2. .
3. ..
4. .
5. ..
6. ..
7. ...
8. ...
9.
10. ..
11. Omitted (because not required in this case)."

9. We have examined Section 4-I of the U.P. Industrial Disputes Act, 1956 which provides for 'Notice of Change' and the 'Third Schedule'. From their careful examination, we are unable to agree with the High Court that the Third Schedule does not speak about the change of service conditions of the workmen. It is clear from Section 4-I that if any change is required to be made in the conditions of service applicable to any workman in respect of any matter specified in the Third Schedule, the same can only be done by notice to the workman who would be affected by such change. The Third Schedule clearly deals with Conditions of Service for change of which notice is to be given. Clause 1 of these Conditions in the Third Schedule would clearly indicate that if any change is required to be made in the Wages including the period and mode of payment of workmen, the same can only be done after service of notice to the workmen. Therefore, from a plain reading of the Third Schedule, it is clear that it enumerates the conditions of service for change of which notice has to be served upon the workmen. In this view of the matter, the finding of the High court that the Third Schedule does not talk about the change of service conditions is unfounded and not acceptable. For this reason, a notice ought to have been served upon the employees before effecting any change in their conditions of service. Let us now examine if the change effected by the Cane Commissioner in the definition of "Crushing Season" would have any impact on the conditions of service of the appellant. Admittedly, as per the earlier definition, as noted herein earlier, "Crushing Season" meant the period beginning on the 1st of October in any year and ending on 15th of July next following. By virtue of the amended definition, "Crushing Season" means the period commencing from the date when the crushing of sugarcane in the concerned sugar factories commences till the date when crushing ends. In our view, this change in the definition of "Crushing Season" would affect the period for which the employees are to be paid the wages and this change is squarely covered by Clause 1 of the Third Schedule as noted herein earlier. Therefore, in our view, it was incumbent upon the Cane Commissioner to serve a notice upon the appellant before effecting any change in the definition of "Crushing Season".

10. In view of our discussions made hereinabove, we, therefore, hold that the orders dated 17th of May, 1993 and 14th of July, 1993 could not have been passed without giving any notice in compliance with Section 4-I read with the Third Schedule of the U.P. Industrial Disputes Act, 1956, as mentioned herein earlier. In view of our finding made hereinabove, it is, therefore, not necessary to deal with Question No. 2 regarding power of respondent No. 1

to frame and amend regulations under Section 122 of the U.P. Cooperative Societies Act, 1965.

11. For the reasons aforesaid, the impugned judgment of the High Court is set aside. The writ petition filed by the appellant is allowed to the extent indicated above. The appeal is thus allowed without any order as to costs. However, it would be open to the respondent to amend the definition of "Crushing Season" in accordance with law.