

# SUPREME COURT OF INDIA

U.P. State Sugar & Cane Dev. Corpn. Ltd.

Vs.

Chini Mill Mazdoor Sangh

C.A.No.5858 of 2008

(Altamas Kabir and Markandey Katju JJ.)

26.09.2008

## JUDGMENT

**Altamas Kabir, J.**

1. Leave granted.

2. The respondent Nos.2-15, who are members of the respondent No.1 Union, and had admittedly been employed under the appellant as seasonal workmen as defined in the Standing Orders governing the conditions of employment of workmen in vacuum pan sugar factories of the State, raised a claim that although they had been categorized as seasonal workmen they had been employed by the appellant not only during the crushing season but throughout the year. It is their grievance that although their services were utilized as permanent workmen they were paid the salary given to seasonal workmen. They, therefore, made a representation to the Conciliation Officer which ultimately resulted in a Reference made by the State of Uttar Pradesh to the Labour Court on 3.11.1989. The terms of Reference are as follows:

“i) Whether 39 employees mentioned in the Schedule `Ka' can be declared permanent by their employer. If yes, from which date and with other details ?;

ii) Whether the 28 workmen mentioned in the Schedule `Kha' are to be given salary/pay scales on the posts mentioned against their names by their employer. If yes, from which date and with other details ?”

3. At the very outset it may be recorded that out of 39 employees, referred to in the terms of reference, 8 have died or have retired from service; 13 have been made permanent; 4 workmen have not pressed their claim before the Labour Court and only 14 workmen, mentioned in Schedule `Ka', had continued with their claim before the Labour Court.

4. It may also be noted that the second term of reference was not ultimately pressed before the Labour Court, which was, therefore, required to adjudicate only on the claim of the 14

workmen, who remained out of the 39 workmen, that they were entitled to be declared permanent by the appellant herein.

5. In order to appreciate the claim of the said 14 workmen it is necessary to look into the circumstances and the system of employment which prevail in the sugar industry in Uttar Pradesh on account of the fact that sugarcane is a seasonal crop and large numbers of workers are required by the sugar mills during the crushing season which is between the month of October in a given year to the month of April of the following year, i.e. roughly for a period of 7 months in a year. During the remaining part of the year only such employees as are required for maintenance of the mill are employed as permanent workmen as defined in the above-mentioned Standing Orders, but there is no bar to the sugar mills employing even seasonal workmen during the off-season in the mill.

6. The other practice which is followed is that workmen from different categories, as defined in the Standing Orders, are promoted to the next higher category as and when vacancies occur and that merely because the workmen may be required to perform other functions during the off- season, a claim could not be raised that such workmen would be entitled to be categorised in the said higher post in the hierarchy. In order to appreciate the matter with greater clarity the Standing Orders dated 3.12.1958, as revised and published on 27.9.1988, are reproduced hereinbelow:

“Relevant extracts of Standing Orders Uttar Pradesh Extraordinary Gazette, 27th September, 1988 In pursuance of the provision of clause (3) of Article 348 of the Constitution the Governor is pleased to order the publication of the following English translation of notification No.5692 (HI)/XXXVI-2-110 (HI)-77, dated September 27, 1988: No.5692(HI) XXXVI-2-110(HI) - 77, Dated September 27, 1988 Whereas, the Standing Orders governing the conditions of the employment of workmen in vacuum pan sugar factories of the State were enforced under Government notification No.5436- ST/XXXVI-A/208-ST-58, dated October 3, 1958;

And whereas, there was persistent demand for revision of the aforesaid Standing Orders which had become necessary in view of passage of time; Xxxx xxxx xxxx  
xxxx B. Classification of workmen

1. Workmen shall be classified as (i) Permanent,
- (ii) Seasonal,
- (iii) Temporary,
- (iv) Probationers,
- (v) Apprentices, and
- (vi) Substitutes.

(i) A Permanent Workman is one who is engaged on the work of a permanent nature or permanent requirement lasting throughout the year and has completed his probationary period, if any,

(ii) A Seasonal workmen is one who is engaged only for the crushing season and has completed his probationary period, if any,

(iii) A Temporary Workman is one who is engaged for meeting a temporary or casual requirement.

XXXX XXXX XXXX

#### K. Special Conditions Governing Employment of Seasonal Workmen

1. A seasonal workman who has worked or, but for illness or any other unavoidable cause, would have worked under a factory during the whole of the second half of the last preceding season shall be employed by the factory in the current season and shall be entitled to get retaining allowance provided he joins the current season and works for at least one month. The payment of retaining allowance shall be made within two months of the date of the commencement of the season.

Explanation - Unauthorised absence during the second of the last preceding season of a workman who has not been validly dismissed under these Standing Orders and of a workman who has been re-employed by the Management in the current season, shall be deemed to have been condoned by the Management.

2. Every seasonal workmen who worked during the last season shall be put up on his old job whether he was in the `R' shift or in any of the usual shifts.

However, if the exigencies of works so require the management may transfer a workman from one job to another job or from one shift to another including the `R' shift, so however, that the number of workman so transferred does not exceed five per cent of total number of the employees of the factory and that the wages and status of such workman is not affected in any way.

3. A seasonal workman, who is a retainer shall be liable to be called on duty at any time in the off season and if he does not report for duty within 10 days he shall lose his retaining allowance for the period for which he was called for duty.

4. Where owing to trade reasons or other reasons necessary for a bona fide Law Off, as given in Standing Order, `J', it becomes necessary for a factory so to do, it may discharge the seasonal workman before the close of the season with the previous permission of the State Labour Commissioner if he so directs Additional Labour Commission or Regional Additional/ Deputy Labour Commissioner of the area after

paying such compensation to the discharged workman, as may be determined by the authority granting the permission. True Copy”

7. Accepting the case made out by the 14 employees, the Labour Court came to the conclusion that the said workmen had been engaged during the off season neither for additional work nor for temporary work, but for the work for which they had been employed during the crushing season and that the nature of their work was, therefore, continuous despite the fact that there have been a few breaks in their work during the off season. The Labour Court came to the conclusion that the 14 workmen had really been engaged for the major part of the year and that the breaks in service were resorted to only to prevent them from getting the benefits enjoyed by a permanent workman. The Labour Court held that the said workmen came within the definition of permanent workmen, and were, therefore, entitled to be declared as permanent. The concerned 14 workmen were, therefore, declared to be permanent from the date of the Award and the appellant was directed to give them all the benefits that a permanent workman was entitled to from the same date. The Award of the Labour Court was challenged by the appellant before the High Court in Writ Petition CMWP No.1263 of 2004. Accepting the findings of the Labour Court that the 14 workmen had really been performing their duties on a permanent basis, the High Court chose not to interfere with the Award of the Labour Court and dismissed the writ petition.

8. The U.P. State Sugarcane Development Corporation Limited is now in appeal before us questioning both the Award of the Labour Court as also the decision of the High Court in respect thereof.

9. Mr.Upadhyay, learned Advocate who appeared for the appellant -Corporation, reiterated the stand taken by the appellant before the Labour Court and the High Court that the work performed by the respondent Nos.2-15 had been wrongly determined to be of a permanent nature. It was submitted that the said workmen had been engaged only for the crushing season, but since they were not workmen who were involved in handling of the sugarcane during the crushing season but were technical hands, they were also provided with work in the mill during the off season, not as a matter of right but to provide them with a livelihood during the off season. It was urged that both the Labour Court, as well as the High Court, misconstrued the intention of the appellant in coming to a finding that 14 workmen were, in fact, performing the work of a permanent nature which entitled them to the status of permanent worker.

10. Mr. Upadhyay also submitted that since the policy with regard to promotion of workmen from one category to a higher category depended on the vacancies available in the next higher category, it was a managerial function, which could not be usurped by the Labour Court and, in any event, the concept of redetermining the status of the workmen, on account of the duties performed by them, did not arise in the present case.

11. In support of his submission Mr. Upadhyay firstly referred to a Constitution Bench decision of this Court in *Management of Brooke Bond India (P) Limited v Workmen*<sup>1</sup>,

wherein while considering the power of the Labour Tribunals and the management to grant promotions, it was observed:

“Generally speaking, promotion is a management function; but it may be recognized that there may be occasions when a tribunal may have to interfere with promotions made by the management where it is felt that persons superseded have been so superseded on account of mala fides or victimization. Even so after a finding of mala fides or victimization, it is not the function of a tribunal to consider the merits of various employees itself and then decide whom to promote or whom not to promote. If any industrial tribunal finds that promotions have been made which are unjustified on the ground of mala fides or of victimization, the proper course for it to take is to set aside the promotions and ask the management to consider the cases of superseded employees and decide for itself whom to promote, except of course the person whose promotion has been set aside by the tribunal.”

12. The other decision relied upon by Mr. Upadhyay is that of this Court in the case of *The Hindustan Lever Limited v The Workmen*<sup>2</sup>, wherein while considering the question of an employer's right to transfer a workman in the absence of victimization, unfair labour practice or violation of any condition of service, this Court reiterated its earlier views and held promotion to be a management function and the Labour Court could not arrogate to itself such management function in the absence of findings of mala fides or victimization or any unfair labour practice.

13. Mr. Upadhyay submitted that in declaring the concerned workman to be permanent from the date of the Award the Labour Court had arrogated to itself the functions of the management which had been held to be beyond the powers of the Labour Court and the Award was, therefore, liable to be set aside along with the judgment of the High Court.

14. Mr. P.K. De, learned Advocate who appeared for the respondents, supported the findings and observations of the Labour Court and the High Court and urged that it had been correctly found that the respondent Nos.2-15 had been performing work of a permanent nature which is required to be performed throughout the year and not only during the crushing season.

15. Mr.De submitted that all the said workmen were technical hands and not labour engaged to perform manual work during the crushing season. Even during the crushing season the said workmen were engaged in maintenance of the machinery in the mill, which was not a seasonal work, but entailed maintenance of the mill machinery throughout the year. Although, it had been urged on behalf of the appellant that they were seasonal workmen who had been provided work during the off season, their work was of a continuous nature which required the appellant to engage them not only during the crushing season but also during the whole year.

16. According to Mr. De, the definition of the expression permanent as used in the Standing Orders referred not to the employee but to the nature of work being performed. Since in the instant case the work performed was of a permanent nature, which required the services of

the respondent Nos. 2-15 throughout the year, they had been rightly declared by the Labour Court as permanent workmen on account of the nature of work performed by them throughout the year.

17. Reliance was placed on the decision of this Court in *Jardine Henderson Ltd. v Their Employees*<sup>3</sup> which was a case involving the payment of gratuity and provident fund by way of retiring benefits and is of little relevance to the facts of this case. He also relied on the decision in the Brooke Bond Limited case (supra) where in the opening paragraphs of the judgment the Tribunal had expressed the view that although promotion was a management function and had to be left mainly to the discretion of management, in an appropriate case the workman had a right to demand relief when the just claim of the senior employees were overlooked.

18. Reference was lastly made to the decision of this Court in *Workmen employed by Hindustan Lever Limited v. Hindustan Lever Limited*<sup>4</sup>, where reference had been made to the earlier decisions in the Brooke Bond case (supra) and the Hindustan Lever Limited case (supra) and an observation had been made that the view taken in the said cases that promotion is a managerial function may have to be re-examined in an appropriate case.

19. Mr. De contended that the Award of the Labour Court was fully justified in the facts and circumstances of the case and the High Court had rightly upheld the same.

20. From the facts as set out hereinabove and the submissions made by the respective parties, we are left to decide the question as to whether even in the light of the Tribunal's finding that the work performed by the respondent Nos. 2-15 was of a permanent nature on account whereof their services were required throughout the year, it could have declared the said workmen to be permanent or whether such declaration amounted to usurpation of the management's functions which were beyond its powers.

21. That there are different categories of workers employed in the sugar industries, and, in particular, during the crushing season, is not disputed by any of the parties. It is not denied that apart from the permanent workmen, the other categories of workmen are employed during the crushing season which begins in the month of October in a given year and continues till the month of April of the following year. It is the period during which the sugarcane crop is harvested, and, thereafter, transported to different mills where they are crushed for production of sugar. Admittedly, as will appear from Standing Order No.2, a muster- roll of all employees, who are not permanent, is maintained by the different sugar mills and at the beginning of the crushing season the seasonal labour who had worked during the previous crushing season are asked to join their duties for the crushing season in their old jobs. It is also not denied that the pay scales of the different categories of workmen are different.

22. It has been submitted on behalf of the appellant that even when the seasonal workmen are employed during the off season they are paid the same wages as are paid to them during the crushing season, which is one of the basic distinctions between them and permanent

workmen who are on the rolls of the sugar mills. It is also an admitted position that, in terms of the policy followed by the sugar mills, promotions are given from one category to the next higher category depending on the number of vacancies as are available at a given point of time. Even in the instant case, of the 39 workmen referred to in the terms of reference, 13 had been made permanent by the appellant which supports the case of the appellant that promotion is given from one category to the higher categories as and when vacancies are available and that such function was clearly a managerial function which could not have been discharged by the Labour Court.

23. We are in agreement with the views expressed by the Constitution Bench of this Court in the Brooke Bond case (*supra*) as also those of the three-Judge Bench in the Hindustan Lever case (*supra*). In our view, this is not a case of fitment depending on the nature of the work performed, but a case of promotion as and when vacancies are available. Both the Labour Court as well as the High Court do not appear to have considered this aspect of the matter with the attention it deserved and proceeded on the basis that this was a case where the respondent Nos. 2-15 had been denied their right to be categorised as permanent workmen on account of the nature of the work performed by them throughout the year. The High Court has, in fact, merely relied on the findings of the Labour Court without independently applying its mind to the said aspect of the matter.

24. We, therefore, accept the submissions advanced by Mr. Upadhyay and allow the appeal. The Award of the Labour Court and the Judgment of the High Court impugned in this appeal, are set aside.

25. There will be no order as to costs.

<sup>1</sup>(1966) 2 SCR 465

<sup>2</sup>(1974) 3 SCC 510

<sup>3</sup>AIR 1967 SC 515

<sup>4</sup>(1984) 4 SCC 392