

(2016) 05 AHC CK 0251

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 60557 of 2015

Anil Kumar Pandey and 17 Others

APPELLANT

Vs

State of U.P. and 4 Others

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Uttar Pradesh Cane Co-operative Service Regulations, 1975 — Regulation 34

Citation : (2016) 5 ADJ 723 : (2016) 3 UPLBEC 2122

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Sanjai Kumar Pandey and Shrawan Kumar Tripathi, Advocates, for the Appellant; C.S.C. and Ravindra Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—Petitioners, who are 18 in number, claim to be seasonal employees engaged in respondent Cane-growers' Co-operative Society. They have filed present writ petition for a direction upon the respondents to allow them to join as seasonal employees, at the start of new cane Crushing Season i.e. 1st October, 2015, and permit them to continue till the end of crushing season i.e. 15th July, 2016. By way of amendment, petitioners have also challenged order dated 10.3.2016, discontinuing their engagement during the midst of crushing season, by paying them off.

2. A preliminary objection with regard to maintainability of the present writ petition was raised, on behalf of the respondent cane society, relying upon a judgment delivered by this Court in Ram Karan v. State of U.P. and others being Writ Petition No.27306 of 2014, and in Special Appeal No.779 of 2014, holding therein that a writ petition would not lie against cooperative cane society. This objection was opposed by the petitioners, relying upon Full Bench judgment of this Court in Vijay Bihari Srivastava v. U.P. Postal Primary Co-operative Bank Ltd., 2003 (1) UPLBEC 1. Finding substance in petitioners' contention, matter was referred to a Larger Bench, for answering following questions:-

"1. Whether a writ petition under Article 226 of the Constitution of India would be maintainable against a Co-operative Cane Development Society, at the instance of its employee, for alleged breach of the provisions of the Uttar Pradesh Cane Co-operative Service Regulations, 1975, which governs his service conditions?

2. Whether the law laid down in *Ram Karan v. State of U.P. and others* (supra) and *Srinarayan Gupta v. State of U.P* (Supra) lay down the correct law, in view of the law laid down by the Full Bench in *Vijay Bihari Srivastava v. U.P. Postal Primary Cooperative Bank Ltd.*, (2003) 1 UPLBEC 1?

3. Whether U.P. Cane Cooperative Service Regulations, 1975 is statutory in nature having been issued under Section 122 of the Act, or is merely in the nature of administrative instructions?"

3. A Bench of three Hon'ble Judges of this Court, presided over by Hon'ble the Chief Justice, has been pleased to answer the questions referred in following words:-

"Having regard to this position, we would necessarily have to hold, as we do, that the broad principle of law which has been formulated in the judgment of the Division Bench in *Shrinarayan Gupta* (supra) would not be reflective of the correct position of law. Both the judgments of the Division Bench in *Shrinarayan Gupta* and of the learned Single Judge in *Ram Karan* would necessarily have to be read in a manner consistent with the view taken in the judgment of the Bench of five learned Judges of this Court in *Vijay Bihari Srivastava*'s case.

The Regulations which have been framed in exercise of the power conferred by Section 122 of the Act are traceable to a source of statutory power. These Regulations are framed by the Cane Commissioner as an authority to whom the functions of doing so have been delegated by the State Government under Section 122. Hence, the Regulations cannot be regarded merely as administrative instructions. The Regulations have been made in pursuance of the statutory power conferred by Section 122.

We accordingly answer Questions (2) and (3) referred by the learned Single Judge in the aforesaid terms. Insofar as Question (1) is concerned, the issue would have to be resolved having due regard to the tests which have been laid down in the judgment of five Judges of this Court in *Vijay Bihari Srivastava*'s case. Moreover, the issue of maintainability is distinct from whether the discretion should be exercised under Article 226 in a given case. Even if a petition is maintainable, the Court may, in the facts of a particular case, decline to entertain it under Article 226 as, for instance, where disputed questions of fact arise or an efficacious alternate remedy is available.

Having regard to the fact that the writ petition is still pending, we leave it open to the learned Single Judge to arrive at a decision on the basis of the law as laid down in the judgment of the five Judges of this Court in *Vijay Bihari Srivastava*,

as noted above.

The reference is accordingly answered. The petition shall now be placed before the appropriate Bench according to roster for decision in light of this judgment."

4. The matter has accordingly been placed before this Court. I have heard Sri S.K. Tripathi, learned counsel for the petitioner, learned Standing Counsel for the respondent State and Sri Ravindra Singh, learned counsel for the respondent no.2 to 5, and have perused the records.

5. Before advertng to the contentions raised by the parties, it would be appropriate to take note of the relevant statutory provisions, operating in the field. The State has enacted "The U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953", (hereinafter referred to as "the Act of 1953") with the object of regulating supply and purchase of sugarcane required for use in sugar [factories and Gur, Rab or Khandsari Sugar Manufacturing Units].

6. Section 2 of the Act of 1953 defines "Cane-grower", "Canegrowers" Co-operative Society", and "Crushing season" in following words:-

"2(e). "Cane-grower" means a person who cultivates cane either by himself or by members of his family or by hired labour and who is not a member of a "Cane-grower" Co-operative Society".

2(f). "Cane-growers" Co-operative Society" means a society registered under the Co-operative Societies Act, 1912, one of the objects of which is to sell cane-grown by its members and includes the federation of such societies registered under Section 8 of the said Act.

2(i). "Crushing season" means the period beginning on the 1st October in any year and ending on the 15th July next following."

7. Chapter III of the Act of 1953, which deals with "Supply and Purchase of Cane" refers to the Cane-growers" Co-operative Society under section 13(1), as under:-

"13. Register of Cane-growers and Cane-growers" Cooperative Society or Societies.- (1) The occupier of a factory shall maintain in the prescribed form a register of all such cane-growers and Cane-growers" Co-operative Society or Societies, and shall sell cane to that factory."

8. Section 16 of the Act of 1953 contemplates regulation of purchase and supply of cane in the reserved and assigned areas, which reads as under:-

"16. Regulation of purchase and supply of cane in the reserved and assigned areas.- (1) The State Government may, for maintaining supplies, by order, regulate-

(a) the distribution, sale or purchase of any cane in any reserved or assigned area; and

(b) purchase of cane in any area other than a reserved or assigned area.

(2) Without prejudice to the generality of the foregoing powers such order may provide for-

(a) the quantity of cane to be supplied by each Cane-grower or Cane-growers" Co-operative Society in such area to the factory for which the area has so been reserved or assigned;

(b) the manner in which cane grown in the reserved area or the assigned area, shall be purchased by the factory for which the area has been so reserved or assigned and the circumstance in which the cane grown by a cane-grower shall not be purchased except through a Cane-growers" Co-operative Society."

(c) the form and the terms and conditions of the agreement to be executed by the occupier or manager of the factory for which an area is reserved or assigned for the purchase of cane offered for sale;

(d) the circumstances under which permission may be granted-

(i) for the purchase of cane grown in reserved or assigned area by a [Gur, Rab or Khandsari Manufacturing Unit or any person or factory] other than the factory for which area has been reserved or assigned, and

(ii) for the sale of cane grown in a reserved or assigned area to a [Gur, Rab or Khandsari Manufacturing Unit or any person or factory] other than the factory for which the area is reserved or assigned;

(e) such incidental and consequential matters as may appear to be necessary or desirable for this purpose."

9. Section 18 of the Act of 1953 provides for "commission on purchase of cane". It lays down that where purchase is made through a Cane-growers" Co-operative Society, commission shall be payable to the Cane-growers" Co-operative Society in the manner prescribed by the State Government. Section 28 of the Act provides for "power to make rules".

10. In exercise of powers conferred under the Act of 1953, the Governor has been pleased to make The U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954, (hereinafter referred to as the "Rules of 1954"). Rule 2(h) defines "society clerk" in the following words:-

"Society clerk" means any person appointed as such by a Canegrowers" Co-operative Society to do any work connected with the supply, purchase, payment and weighing of cane at a purchasing centre.

11. Chapter XI of the Rules of 1954 deals with Cane-growers" Cooperative Society. Rule 52 to 63 of the rules are reproduced:-

"52. The terms and conditions of service including the qualifications, grades, and scales of salaries of the permanent as well as temporary staff of the Cane-

growers" Cooperative Society shall be determined by the Federation subject to the approval of the Cane Commissioner.

53. The strength of staff to be maintained by a Cane-growers" Cooperative Society shall be fixed by the Cane Commissioner or an officer authorised by him in that behalf, with due regard to the working requirements and financial resources of the society.

54. The power to appoint, grant leave of absence to, punish, dismiss, transfer and control Secretaries, Assistant Secretaries and Accountant of Cane-growers" Co-operative Societies, whether permanent or temporary, shall be exercised by the Federation subject to the general control of the Cane-Commissioner who may rescind or modify any order of the Federation.

Provided that Cane Commissioner may himself exercise any such powers in case of emergency.

55. Similar powers as stated in Rule 54 may be exercised by the society in respect of the other staff, subject to the regulations made by the Federation and the general control of the Cane-Commissioner.

56. 1 [* * *]

57. All the arrangements in connection with the sowing, sale and supply of cane by Cane-growers" Co-operative Societies shall be in accordance with such general or special instructions as may be issued by the Cane-Commissioner from time to time.

58. Every Cane-growers Co-operative Society shall prepare a budget annually and submit it for sanction to the Cane-Commissioner not later than thirty days before the commencement of the budget year.

59. (1) Expenditure shall be incurred unless it has been provided for in the budget as sanctioned.

(2) In an emergency or to meet an unforeseen contingency the Cane-Commissioner may order expenditure on any specified item from the funds of a Cane-growers" Co-operative Society, provided that such expenditure is in the furtherance of the objects of the society.

60. If the Cane Commissioner finds that the management of a society or any member thereof is misusing the resources of the society or is utilising its funds against the provisions of the Cooperative Societies Act and Rules or the bye-laws of the society or any standing or specific instructions of the Cane Commissioner, he may prohibit the society or the member concerned from incurring the expenditure or the liability, and the management of the society or the member concerned, as the case may be, shall be bound to carry out such instructions.

61. 2 [* * *]

62. 3 [* * *]

63. An appeal against an order of the Cane Commissioner under the provisions of this Chapter shall lie to the State Government within one month of the date of the communication of the order to the society or the persons concerned."

12. In exercise of powers under section 16 of the Act of 1953, the Governor has been pleased to make The U.P. Sugarcane (Regulation of Supply and Purchase) Order, 1954, which got published in U.P. Gazette on 4.9.1954. Clause 5 of the Order of 1954 provides for general provisions regarding purchase of cane, thereunder. It is only a cane-grower or Cane-growers" Co-operative Society, which is entitled to sell cane to the occupier of a sugar factory. Since cane-growers of the area are invariably members of the Cane-growers" Co-operative Society, and only a non-member of Cane-growers" Cooperative Society can be a cane-grower, in view of section 2(e) of the Act of 1953, as such, it is only the Cane-growers" Co-operative Society, which is entitled to supply cane to the occupier of a sugar factory under the statutory scheme.

13. Respondent no.5 is one such Cane-growers" Co-operative Society, registered under the provisions of the U.P. Cooperative Societies Act, 1965, and is a juristic person (hereinafter referred to as "society"). It performs the work, exclusively assigned to it under the Act of 1953, as well as Rules and Orders issued thereunder.

14. In normal parlance, cane crushing season is generally understood to mean the season during which sugarcane crop is harvested in the State of U.P. In the Act of 1953, "crushing season", however, is defined as a period beginning on the 1st October in any year and 15th July next following.

15. To regulate the service conditions of the employees of Cane-growers" Co-operative Society, U.P. Cane Co-operative Service Regulations, 1975, (hereinafter referred to as "Regulations of 1975") have been framed and notified on 18.10.1975. While answering the reference, the Larger Bench has been pleased to hold that Regulations of 1975 have been made in pursuance of the statutory powers conferred under section 122 of the U.P. Co-operative Societies Act, 1965, and are therefore statutory in nature. The crushing season is defined in regulation 2(n) of the Regulation of 1975, as under:-

"Crushing season" means the period as defined in U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953."

The definition of "crushing season" as given in the Act of 1953 stands incorporated in the Regulations of 1975.

16. Regulation 21, 26 and 34 of the Regulations of 1975, which are relevant for the purposes of determining the controversy involved reads as under:-

"21. Categorisation. - At the end of each crushing season the Secretary of the Cane Union shall classify the entire seasonal staff into ""A" and ""B" categories on the basis of their work and worth during the season. Such persons unquestionable integrity and have discharged their duties efficiently during the

crushing season shall be placed in ""A" category and the rest in category ""B". When seasonal employee is placed in category ""B" he will be informed of the same together with the grounds for his categorisation and an opportunity shall be given to him to explain the charges and deficiencies against him. These proceedings shall be of summary nature and shall be conducted by the Secretary of the Union concerned.

.....

26. The staff placed in category shall be automatically reemployed in the next season unless the strength of seasonal staff has been reduced in any particular year to such an extent that it may not be possible to re-employ all such staff.

34. Termination of services.- The services of a seasonal employee may be terminated by the recruiting or appointing authority at any time on a week's notice or with a week's salary in lieu thereof. This provision shall not apply in case of termination as a result of disciplinary proceedings or termination at the close of the crushing season."

17. It is asserted in the writ petition that petitioner nos.1 to 7 are working as seasonal clerks, while petitioner nos.8 to 18 are seasonal parchi distributors, of respondent no.5 society. Relying upon the definition of "crushing season", it is alleged, that petitioners are entitled to be automatically called for work at the start of every cane crushing season, which in view of the applicable provisions would mean 1st of October in a calendar year and continue upto 15th of July in the next year, as a seasonal employee. It is stated that upto the year 2010, petitioners were engaged at the start of crushing season, and continued to work till the season got over on 15th of July next.

18. Upto the year 1993, definition of crushing season under regulation 2(n) to mean as the period defined under the Act of 1953 continued. However, amendment was made in regulation 2(n) of the Regulations of 1975 by the Cane Commissioner, vide order dated 17th May, 1993 and 14th July, 1993, amending Regulation 2(n) to the following effect: "Crushing season" means the period commencing from the date when crushing of sugarcane in concerned sugar factory commences till the date when crushing ends".

19. This amendment of 1993 was challenged in Writ Petition No.33014 of 1993, which got dismissed on 26th April, 2005. The judgment of this Court was challenged by U.P. Cane Union Employees Federation Limited before the Apex Court, and the appeal was allowed vide judgment dated 10th April, 2008, reported in JT 2008(5) SC 439. Hon'ble Supreme Court held that in view of Section 4-I of the U.P. Industrial Disputes Act, 1947, the change in the definition of "crushing season" amounted to change in service conditions, which could not be changed without notice to them. The notification dated 17th May, 1993 and 14th July, 1993, were accordingly set-aside and the writ petition was allowed. Para 10 and 11 of the judgment is extracted below:-

"10. In view of our discussions made here in above, 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 here in above, 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."

20. After the judgment by the Apex Court, Cane Commissioner, U.P., after hearing the employees, again passed an order on 13th April, 2010, amending the definition, which got published in the U.P. Gazette on 17th April, 2010. By this order, regulation 2(n) of the Regulations of 1975 was again amended to the same effect, as it was vide notification dated 17.5.1993 and 14.7.1993. This amendment was again challenged in a writ petition, before this court, which was dismissed. A Special Appeal No.943 of 2010 arising out of such order, however, was partly allowed on 2.11.2011, in the following terms:-

"In result, all the special appeals as well as writ petitions giving rise to special appeals, are partly allowed in following manner:-

(i)The judgment of learned Single Judge impugned in these appeals are set-aside. The Special Appeal No. 1780 of 2010 although is against an order refusing to grant interim relief, but since the issues raised in the writ petition giving rise to Appeal No. 1780 of 2010 are fully covered by this judgment, the Writ Petition No. 61204 2010 as well as Special Appeal No. 1780 of 2010 are allowed to the extent as indicated below.

(ii)The order of the Cane Commissioner dated 13th April, 2010 as published on 17th April, 2010 is set-aside.

(iii) The order dated 24th April, 2010 is also quashed insofar it relieves the appellants without giving one week's notice or with a week's salary in lieu thereof. However, the appellants shall be entitled for only a week's salary as per Regulation 34 of the 1975 Regulations in lieu of one week notice, as a result of quashing of the order dated 24th April, 2010.

Parties shall bear their own costs."

21. Some of the employees, to the extent they felt aggrieved by the judgment in special appeal, approached the Apex Court in Special Leave to Appeal (Civil) Nos.19551-19553 of 2012. An undertaking in the matter was given by the respondents on the basis of which the special leave petitions were disposed off. Second paragraph of the order of the Apex Court dated 27.9.2013 is reproduced:-

"In pursuance of the order which was passed on the last date, Dr. Dhawan has taken instructions and he states that as far as the future employment of the workmen is concerned, they will be governed under Regulation 21 and 26 of the relevant regulations. Mr. Chahar states that the last sentence in the impugned order is uncalled for and as far as termination of service by one week's notice is concerned that was not the issue before the High Court. If that is so it would be open to the petitioners to approach the High Court for review of this part of the order. The special leave petitions are disposed of with this order."

22. A review petition filed in Special Appeal by the workers was also rejected on 16.5.2014.

23. Petitioners claim that in the last cane crushing season they were placed in category "A" and were paid-off on 9.4.2015. It is stated that a Writ Petition No.25124 of 2015 had been filed, in respect of their grievance relating to their discontinuance during the crushing season i.e. 15th July next, but as the season has already come to end, the said petition has been rendered infructuous.

24. It is then contended that present crushing season commenced on 1st October, 2015, and by virtue of regulation 26, petitioners were entitled to be automatically re-employed on 1st of October, 2015, but they were not allowed to resume their duties. Consequently, present writ petition is filed for the prayer already noticed above. While entertaining the writ petition, following interim order was passed on 3.11.2015:-

"1. Learned Standing Counsel has accepted notice on behalf of respondent Nos.1 to 4, whereas notices on behalf of respondent No.5 have been accepted by Shri Ravindra Singh, Advocate. All the respondents may file a counter affidavit within three weeks. Petitioner will have two weeks thereafter to file rejoinder affidavit. List thereafter.

2. By a separate order passed today in the writ petition, matter has been referred for constitution a Larger Bench to answer the questions framed therein.

3. For the reasons stated therein, as a interim measure it is provided that the petitioners, who are seasonal employees of the respondent Cane Co-operative Society and are placed in Category-A, would be entitled to automatic re-employment, at the start of the season, in terms of Regulation 26 of the Uttar Pradesh Cane Co-operative Service Regulations, 1975."

25. It is not in dispute that petitioners have been engaged as seasonal staff by the cane society, after passing of the interim order dated 1.11.2015 and were allowed to continue till 10th March, 2016, when they were paid-off. The question, which arises for consideration in this petition, thus, is; (i) whether petitioners are entitled to automatic re-employment at the start of season i.e. 1st October, 2015, or their engagement is dependent upon start of cane crushing operations in the sugar factories, operating in the area? and (ii) whether petitioners' seasonal engagement could be discontinued during the currency of crushing

season i.e. upto 15th July, 2016, in view of the provisions contained under Regulations of 1975?

26. Sri S.K. Tripathi, learned counsel appearing for the petitioners submits that the statutory service regulations provides for automatic re-employment to seasonal employees, placed in category "A" at the close of last season, by virtue of regulation 26, read with section 2(i) of the Act of 1953. The definition of "crushing season" given in the Act of 1953 stands incorporated in Regulations of 1975, by virtue of clause 2(n), and failure on part of the respondents to act as per it, by denying automatic re-employment to seasonal employees, entitles them to grant of relief prayed in this petition. It is also contended that the Cane-growers' Co-operative Societies perform public duty, enjoined upon it as per law, which cannot be performed without employing petitioners. It is contended that the definition of cane crushing season, which stands quashed by this Court in special appeal, is being enforced by the employers, in teeth of their undertaking given before the Supreme Court, which is impermissible. Learned counsel also contends that supply of sugarcane by the society on behalf of its members is not restricted to sugar factories alone, but it also extends to allied industries which are covered under the purview of 1953 Act, and as such, it is not otherwise open to confine crushing season to the actual crushing operations by the sugar factories alone. Attempt has also been made to question the plea that work was not available with the society, on account of which petitioners have been paid-off on 10.3.2016.

27. Sri Ravindra Singh, learned counsel appearing for the cane society, with reference to the observations made in para 27 of the judgment in Special Appeal No.943 of 2010, submits that there cannot be any restrain on the employer to take work from its seasonal staff, during the period when their services are not required, nor can there be any restrain upon terminating their services, when there is no requirement. It is also contended that it is not necessary for the society to engage seasonal employees from 1st October itself, as the crushing operations in the sugar factories commences much thereafter, and the employees were being engaged by the society at the commencement of crushing operations by the sugar factories. It is also contended in para 23 of the counter affidavit that petitioners were paid-off, as there was no requirement of work, and they have already been paid-off as per law. According to the respondents, the society is running in financial losses and if the seasonal employees are directed to be retained in employment from 1st October to 15th July next, even in the absence of work, it would cause grave hardship to the society, which is already in poor financial condition. It is submitted that petitioners have the remedy available to them under the Regulations of 1975, as also under section 70 of the Act of 1965, and without exhausting it, the writ petition is not liable to be entertained. It is also contended that issues raised in this petition are already engaging attention of this Court in Contempt Petition, and also before the Apex Court in Contempt Petition (Civil) No.560-562 of 2014, and hearing of this petition be deferred awaiting disposal of the matter before the Apex Court. Reference has also been

made to the provisions of Standing Orders applicable upon the employees of sugar mills with reference to the definition of "season" therein, to contend that "season" occurring in Regulations of 1975 is not defined. Submissions are also advanced regarding maintainability of writ petition on the ground that various factual issues would require determination, for which Article 226 would not be the appropriate remedy.

28. In substance, respondents intends to urge that term "season" occurring in regulation 26, which talks of automatic reemployment in the next season, refers to a period during which the cane crushing activity is undertaken in the sugar factories, and therefore, the engagement of seasonal staff placed in category "A" cannot be from 1st October of the respective calendar year.

29. This contention proceeds upon the assumption that term "season" occurring in regulation 26 is distinct from "crushing season" as defined under regulation 2(n) of the Act of 1953.

30. Statutory applicable provisions, noticed above, leaves no room of doubt that the Cane-growers' Co-operative Society has been constituted for undertaking the functions assigned to it under the Act of 1953. The object of the Act of 1953 is regulation of "supply and purchase of sugarcane" required for use in sugar factories, Gur, Rab or Khandsari sugar manufacturing units. The definition of crushing season, as it exists on record, is categorical, inasmuch as it refers to a period beginning from 1st October to 15th July next. The stand of respondents rests upon the definition, which stands quashed by this Court, and as such, is not liable to be accepted. The automatic employment of "seasonal employees" under regulation 21 would, therefore, start with 1st October and not from the start of crushing operations in a factory.

31. In case "crushing season" is confined to the actual cane crushing operations undertaken by a sugar factory, then within the same geographical area different crushing seasons may exist, depending upon the period of cane crushing activity in a particular factory. Judicial notice can be taken of the fact that crushing operations in the factory often vary, depending upon the crushing capacity, financial health of the unit, availability of cane to the factory and many other circumstances. Some times areas reserved to one factory may be assigned to another factory, in which case different crushing periods may result in the same area. This may lead to an arbitrary scenario inasmuch as different period of working may be offered to members of same society or different societies, operating in the same area.

32. It appears that as harvesting of sugarcane in the State is linked directly to a particular season characterised by particular conditions of weather, temperature etc. in a given period of time, as such, the legislature thought it proper to specify crushing season in the Act of 1953. The interpretation suggested by the respondents is not only contrary to what is provided in the Act, but seems to run contrary to the object underlying the statutory scheme also. It is otherwise

settled principle that if a statute requires a thing to be done in a particular manner, it has to be done in that way alone. The principle enunciated in *Taylor v. Taylor*: (1875) LR (1) CH-D- 426, as followed in *Nazir Ahmad v. King Emperor*: AIR 1936 PC 253, has consistently been the law and requires no reiteration. Regulation 26 uses the word "shall" before contemplating automatic re-employment of seasonal staff placed in category "A" at the start of next season, unless the strength of seasonal staff is reduced in any particular year to such an extent that it may not be possible to re-employ all such staff. Word "shall" has been considered by Hon"ble Supreme Court recently in *Mackinnon Mackenzie and Co. Ltd. v. Mackinnon Employee Union*, (2015) 4 SCC 544. Para 39 to 43 is reproduced:-

"39. The relevant paragraphs from the decision of this Court in *Babu Ram Upadhy* 11 are extracted hereunder: (AIR pp. 764-65, paras 28-29)

"28. The question is whether Rule I of Para 486 is directory. The relevant Rule says that the police officer shall be tried in the first place under Chapter XIV of the Criminal Procedure Code. The word 'shall' in its ordinary import is ? obligatory? but there are many decisions wherein the courts under different situations construed the word to mean 'may'. This Court in *Hari Vishnu Kamath v. Ahmad Ishaque* dealt with this problem at SCR p. 1125 thus: (AIR p. 245, para 26)

?26. It is well established that an enactment in form mandatory might in substance be directory and that the use of the word "shall" does not conclude the matter?.

It is then observed: (AIR p. 245, para 26)

?26. ? They [the Rules] are well known, and there is no need to repeat them. But they are all of them only aids for ascertaining the true intention of the legislature which is the determining factor, and that must ultimately depend on the context.?

The following quotation from *Crawford on the Construction of Statutes*, at p. 516, is also helpful in this connection:

?The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other?..?

This passage was approved by this Court in *State of U.P. v. Manbodhan Lal Srivastava*. In *Craies on Statute Law*, 5th Edn., the following passage appears at p. 242:

?No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for

disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.?

A valuable guide for ascertaining the intention of the legislature is found in Maxwell on the Interpretation of Statutes, 10th Edn., at p. 381 and it is:

?On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and Government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them.?

This passage was accepted by the Judicial Committee of the Privy Council in *Montreal Street Railway Co. v. Normandin* and by this Court in *State of U.P. v. Manbodhan Lal Srivastava*.

1. The relevant rules of interpretation may be briefly stated thus: When a statute uses the word 'shall', prima facie, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the noncompliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

40. Further, the relevant paras 4 and 10 from V.K. Kangan 12 are extracted hereunder: (SCC pp. 897 & 899)

"4. The only point which arises for consideration is whether the provisions of Rule 3(b) were mandatory and therefore the failure to issue the notice to the department concerned as enjoined by the rule was fatal to the validity of the notifications under Sections 4 and 6 of the Act?

* * *

10. In determining the question whether a provision is mandatory or directory, one must look into the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. No doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview. But it does not

follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the lawmaker. And that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other. We see no reason why the rule should receive a permissible interpretation instead of a pre-emptory construction. As we said, the rule was enacted for the purpose of enabling the Deputy Commissioner (Land Acquisition Collector) to have all the relevant materials before him for coming to a conclusion to be incorporated in the report to be sent to the Government in order to enable the Government to make the proper decision. In *Lonappan v. Collector of Palghat* the Kerala High Court took the view that the requirement of the rule regarding the giving of notice to the department concerned was mandatory. The view of the Madras High Court in *K.V. Krishna Iyer v. State of Madras* is also much the same."

41. Further in *Sharif-ud-Din* 13 it was held as under by this Court: (SCC pp. 406-07, para 9)

"9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that

the requirement is not mandatory and the specified consequence should not follow."

42. Apart from the said decisions, this Court has followed the Privy Council of 1939 and Chancellor's decisions right from the year 1875 which legal principle has been approved by this Court in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* and the same has been followed until now, holding that if a statutory provision prescribes a particular procedure to be followed by the authority to do an act, it should be done in that particular manner only. If such procedure is not followed in the prescribed manner as provided under the statutory provision, then such act of the authority is held to be null and void ab initio in law. In the present case, undisputedly, the statutory provisions of Section 25-FFA of the ID Act have not been complied with and therefore, consequent action of the appellant Company will be in violation of the statutory provisions of Section 25-FFA of the ID Act and therefore, the action of the Company in retrenching the workmen concerned will amount to void ab initio in law as the same is inchoate and invalid in law.

43. It would be appropriate for us to refer to the decision of this Court in *Babu Verghese v. Bar Council of Kerala*, to show that if the manner of doing a particular act is prescribed under any statute, and the same is not followed, then the action suffers from nullity in the eye of the law, the relevant paragraphs of the above said case are extracted hereunder: (SCC pp. 432-33, paras 31-32)

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who stated as under: (*Nazir Ahmad* case 22, IA pp. 381-82)

?? where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.?

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* and again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad* case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

(emphasis supplied)"

The right of a seasonal employee to automatic re-employment at the start of the season is a statutory right, which cannot be denied to him. Any violation would otherwise infringe principle enunciated in section 4-I of the U.P. Industrial Disputes Act, 1947.

33. In view of the object, for which the Cane-growers" Cooperative Society has been formed, and the positive obligations imposed upon it by law leaves no room

of doubt that for its implementation the engagement of seasonal staff would have to be resorted to at the start of cane crushing season.

34. It may further be noticed that upon specific instructions, respondents have already undertaken before the Apex Court that future employment of workmen shall be governed as per regulations 21 and 26 of the Regulations of 1975, vide order of the Apex Court dated 27.9.2013, which has already been extracted above. The specific attempt on part of the respondents to change the definition of "crushing season" so as to make it commensurate with the actual crushing operations of the sugar factories concerned having been rejected, respondents cannot be permitted to subscribe to the definition already set aside in contradiction of the definition standing on the statute. I am, therefore, of the considered opinion that so far as the right of a seasonal employee placed in category "A" at the end of last crushing season to be automatically re-employed in the next season would mean that such a seasonal employee would be entitled to be automatically called at the start of next season defined i.e. 1st October, 2015, in the present case. It is, therefore, held that action of the respondents in not calling to petitioners at the start of crushing season i.e. 1st October, 2015, is illegal and petitioners are entitled to the benefit of automatic reemployment from 1st October, 2015.

As the law on the issue has been settled, as such, the prayer of the respondents to defer the matter, awaiting disposal of contempt proceedings pending before this Court and before the Apex Court, is not liable to be accepted, particularly as petitioners are not the parties therein.

35. Coming to the second limb of petitioners' contention that they are entitled to continue as a matter of right upto the end of season i.e. 15th of July next, it would be relevant to note that under the regulation, there exists no absolute right for the season employee to continue in employment till 15th July, 2016. Regulation 34 clearly permits termination of services of such seasonal employees by recruiting or appointing authority at any point of time on a week's notice or a week's salary in lieu thereof. Referring to the provision in para 27 of the judgment, delivered by the Division Bench in Special Appeal No.943 of 2010, it has been observed clearly that services of such seasonal employees may be terminated at any point of time on a week's notice or salary in lieu thereof.

36. In view of the provisions contained under regulation 34, the contention of petitioners that they are entitled to be continued throughout the crushing season i.e. upto 15th July, 2016, cannot be sustained. It is always open for the society to terminate the services of seasonal employees, after complying with the provisions of regulation 34.

37. The Division Bench in Special Appeal No.943 of 2010 had occasion to deal with such contentions, by observing as under:-

"The second submission of learned counsel for the appellants is that definition of "crushing season" as contained in Regulation 2(n) is irrational and arbitrary. The

definition of "crushing season" in Regulation 2(n) as now amended provides that "crushing season" means the period commencing from the date, when the crushing of sugar-cane in concerned sugar factories commence till the date, when crushing ends. The work of the societies (respondent No.4) is not limited or correspond only to the crushing of sugar-cane in the concerned sugar factory. There is statutory performance by the society even prior to start of crushing season and the societies function even after crushing ends towards the payment of cane price and other allied activities. When the societies' work is not limited to crushing in the sugar mills, there cannot be any restraint in engaging staff beyond the actual crushing by the sugar factories. The definition of crushing season in the 1953 Act is with specific object and purpose and there cannot be two definition, one for society and another for its employee. It is also relevant to note that definition contained in Regulation 75 of "crushing season" shall not only govern the seasonal staff, rather it shall govern all category of staffs. There may be more than one sugar factory in the domain of a society which shall also lead to different crushing season for different factories, hence the same is irrational.

Regulation 60 of the 1975 Regulations has also been referred to which empowers transfer of various categories of staff from one Union to another Union outside the district and within the district which shall lead to inconsistency if for different sugar factories different crushing season is found out and adopted. The definition thus is clearly irrational and unworkable.

The Apex Court in the case of H.S. Vankani and others v. State of Gujarat and others reported in (2010)4 SCC 301, laid down that Courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results. Following was laid down in paragraph 48:-

"48. The above legal principles clearly indicate that the courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results, since such a situation is unlikely to have been envisaged by the rule-making authority. The rule making authority also expects rule framed by it to be made workable and never visualises absurd results....."

The submission on which much stress has been given by the learned Additional Advocate General and Sri Ravindra Singh is that Cane Cooperative Societies are running under great loss and unable to pay wages to its staffs during entire crushing season if it is taken as 1st October to 15th July of next year. There cannot be any restraint on the employer to take work from its seasonal staff for a period when their services are not required nor there can be any restraint to terminate the services of a seasonal staff when there is no requirement. Regulation 34 of the 1975 Regulations, as noted above, clearly envisaged a situation when a seasonal staff can be terminated on a week's notice or a week's salary in lieu thereof. The 1975 Regulations could have been amended to achieve the aforesaid object if so required, however, it is not justified to change very definition of "crushing season".

Learned Additional Advocate General has placed reliance on judgment of the Apex Court in the case of Virendra Pal Singh vs. District Assistant Registrar, Etah reported in (1980)4 SCC 109. In the said case the Apex Court was considering as to whether provisions of banking activity by cooperative societies takes out the Act out of the competence of State legislature. It was held that State legislature is fully competent to legislate since such legislation falls within the legislative competence of the State. The said judgment does not help the respondents in the present case.

Learned Single Judge has erred in observing that Regulation 2(n) of the 1975 Act does not militate against any provision of the 1953 Act since the regulation was framed for an altogether different purpose. The view of the learned Single Judge that Regulation 2(n) is not arbitrary also cannot be supported in view of the reasons as noticed above.

Another order, which has been challenged in the writ petition was an order dated 24th April, 2010 by which the appellants were relieved. The said order also refers to the order of the Cane-Commissioner dated 13th April, 2010.

The issue to be answered is as to for what relief the appellants are entitled in the above facts and circumstances. The seasonal employees, who are appellants, having been relieved on 24th April, 2010, they have not performed any work during the season after 24th April, 2010 and the said crushing season has also come to an end. From the counter affidavit, which has been filed by respondent No.4, as well as from the counter affidavit filed by the State, it is clear that for the last several years in majority of years regarding which statement has been given, i.e. from 1991 to 2009-10, the seasonal staffs were relieved in the month of April. In few cases they were allowed to continue till May or June. In none of the years the seasonal staffs were actually worked till 15th July of the next year. Regulation 34 of the 1975 Regulations empowers the Cane Society to terminate the services of seasonal staff by giving one week's notice or giving one week salary in lieu thereof. Further details regarding financial position of the societies have been mentioned and pleaded. It is not the case that after 24th April any other seasonal staff was allowed to work and have been paid salary. The relieving of the seasonal employee although was on the basis of the order of the Cane Commissioner dated 13th April, 2010 but there being power with the society to terminate by one week notice, the seasonal employees were entitled at best for one week salary since they were not given one week notice as required by Regulation 34 of the 1975 Regulations.

In view of the aforesaid, the appellants were entitled for a week's salary as required by Regulation 34 of the 1975 Regulations before relieving them.

In result, all the special appeals as well as writ petitions giving rise to special appeals, are partly allowed in following manner:-

(i)The judgment of learned Single Judge impugned in these appeals are set-aside. The Special Appeal No. 1780 of 2010 although is against an order refusing

to grant interim relief, but since the issues raised in the writ petition giving rise to Appeal No. 1780 of 2010 are fully covered by this judgment, the Writ Petition No. 61204 2010 as well as Special Appeal No. 1780 of 2010 are allowed to the extent as indicated below.

(ii) The order of the Cane Commissioner dated 13th April, 2010 as published on 17th April, 2010 is set-aside.

(iii) The order dated 24th April, 2010 is also quashed insofar it relieves the appellants without giving one week's notice or with a week's salary in lieu thereof. However, the appellants shall be entitled for only a week's salary as per Regulation 34 of the 1975 Regulations in lieu of one week notice, as a result of quashing of the order dated 24th April, 2010.

Parties shall bear their own costs. "

38. Financial constraints alone cannot obliterate provisions of law. A seasonal employee placed under category "A" will, therefore, have a right to be employed w.e.f. 1st October i.e. start of crushing season and would be entitled to all service benefits accordingly. Such seasonal employee is normally expected to be engaged for the entire season, which stretches upto 15th July of the following year. It is, however, clear by virtue of regulation 26 and 34, that such continuance of a seasonal employee would be subject to availability of work and can always be terminated before close of the season, by giving a week's notice. In case an employee is paid-off without a week's notice, he shall be entitled to payment of a week's salary in lieu of notice.

39. In the facts and circumstances of the present case, petitioner since have not been extended the benefit of automatic employment at the commencement of season 2015 i.e. 1st October, 2015 and has been engaged later, as such, they will be entitled to payment of salary from 1st October, 2015 till they actually got engaged as a seasonal employee.

40. So far as the challenge to the notice dated 10.3.2016 is concerned, the respondents have contended that they have exercised their powers of terminating the petitioners by invoking regulation 34, as there was no work available. Though petitioners dispute this fact and contend that work continued to remain available, but it has not been shown that any other person was engaged by the society in place of the petitioners. Whether work is available or not is essentially a question of fact to be determined by the employer. If the employer comes to a conclusion that no work is available and petitioners are paid-off, which decision is not shown to be discriminatory or arbitrary, no exception can be taken to it. The contention advanced that work is actually available with the society and petitioners were illegally terminated under regulation 34, would otherwise require factual ascertainment of need of work with the society, which need not be entertained by this Court, at the first instance. Petitioners can always agitate such factual issues either before the authorities constituted in terms of the Regulations of 1975 or before the

Registrar under section 70 of the U.P. Cooperative Societies Act, 1965. In case a week's notice is not given before invoking regulation 34, the petitioners would be entitled to salary in lieu thereof.

41. In view of the discussions, aforesaid, the writ petition succeeds and is allowed, in part. Petitioners are held entitled to automatic reinstatement at the start of crushing season i.e. 1st October, 2015, and to continue till termination of their seasonal employment in terms of regulation 34 of the Regulations of 1975, by giving a week's notice or salary in lieu thereof. Petitioners shall be entitled to salary for the period between 1st October, 2015 till the date of actual engagement in the crushing season 2015-2016.

42. No order is passed as to costs.