

(1993) 03 AHC CK 0058

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6878 of 1992

Awadhesh Singh

APPELLANT

Vs

Kishan Sahkari Chini Mills Ltd. and Others

RESPONDENT

Date of Decision : 01-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

Citation : (1993) 2 AWC 852

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : B.N. Singh and Shekhar Yadav, for the Appellant; A.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—By means of this writ petition under Article 226 of the Constitution the Petitioner has sought the relief of issuance of a writ, order of direction in the nature of mandamus directing the Respondents to permit the Petitioner to assume his duties as a permanent seasonal weigh-ment clerk/sheet writer in the Kisan Sahkari Chini Mills Ghosi, district Mau (herein after referred as the Mills) and to pay him wages/salary doe since 8-11-1991 in the clerical grade IV.

2. It transpires from the record that the Petitioner was engaged as sheet writer/ weighment clerk in the crushing season 1989-90 and worked ie that capacity at purchase Centers of the Mill even during the following crushing seasons 1989-90 as well as 1990-91. He claims to have worked in that capacity during whole of the second halves of the aforesaid seasons. His case is that he is entitled to be treated as permanent seasonal employee of the Mills under the provisions of the Standing Orders, 1988 issued by the State Government in exercise of its power u/ s 3(b) of the U.P. Industrial Disputes Act, 1947. His grievance is that when the Mills started operating with effect from 8th November, 1991 i.e. to say in the

crushing season 1991-92, he was given no intimation or information for resuming his duties as sheet writer/weightment which he was entitled to get under the provisions of the Standing Orders, 1988. The main defence to the Petitioner's claim is, as stated in the counter affidavit, that the Petitioner was not permanent seasonal employee. It is also averred in the counter affidavit that the Petitioner did not work for the whole of the crushing seasons 1988-89, 1989-90, and 1990-91. The employment of the Petitioner, it is alleged in the counter affidavit, was of temporary and casual nature as per exigencies and demand. The pleas as to non-maintainability of the writ petition has also been raised.

3. In my opinion the plea as to non-maintainability of the writ petition is not sustainable. The Mills, even if it is a society, is bound, in the matter of employment, by the Standing Orders, 1988 referred to above which, in my opinion are statutory in character and the relationship between the Petitioner and the Respondent Mills is not purely that of Master and servant governed by contract but their relationship is governed by the statutory provisions. As such, in my opinion, it is too late in the day to say that the writ petition is not maintainable.

4. As regards the merits of the case, suffice it to say that the matter is concluded by a decision of mine in three connected writ petitions being writ petition Nos. 4483 of 1992, 4523 of 1992 and 5656 of 1992 decided by a common order dated 14-12-1992. I do not find any reason, what to say of any good reason to take a contrary view in this case.

5. In paragraph 5 of the supplementary affidavit filed on 17-2-1993 on behalf of the Respondents, the following chart has been showing the total number of days, the Petitioner worked during 1988-89, 1989-90 and 1990-91:

Season	date of mill	Date of mill worked	No of mill functioned	No of days	starting	closing	days	Petitioner of mill
1988-89	4-11-1988	12-4-1988	160	98				
1989-90	30-11-1989	5-5-1990	156	126				
1990-91	22-11-1990	13-4-1991	143	127				

6. The Respondents have, however, not produced any material to show that the Petitioner's appointment was made with a view to meet any casual requirement of the Mills. The fact that the Petitioner worked for three consecutive seasons indicates that he worked in the capacity of a seasonal workman. It has not been stated in any of the affidavits filed on behalf of the Respondents that the Petitioner did not work during the whole of the second halves of three successive crushing seasons aforesaid.

7. According to the Standing Orders, 1988 workmen are classified as under:

- (i) Permanent,
- (ii) Seasonal,
- (iii) Temporary,
- (iv) Probationers,

(v) Apprentices, and

(vi) Substitutes

8. A "permanent workman" is one who is on work of a permanent nature, lasting throughout the year and has completed his probationary period. A "seasonal workman", is one who is engaged only for the crushing seasons provided that if he is a retainer, he shall be liable to be called on duty at any time in the off season and if he refuses to join or does not join, he shall lose his lien as his retaining allowance. However, if he submits a satisfactory explanation of his not joining duty, he shall only lose his retaining allowance for the period of his absence. A "temporary workman" is one who is engaged for work of a temporary or casual nature or to fill in a temporary need of extra hands on permanent, seasonal or temporary posts.

9. The affidavits filed on behalf of the Respondents do not disclose the number of permanent, seasonal and temporary posts in the Mills Para 2 (b) of the Standing Orders 1988 lays down the requirement of issuance of different Forms and tickets to each category of workmen. The provisions being relevant are quoted below:

2. (a) Every workman on enrolment shall sign the enrolment Form "A".

(b) At the time of taking appointment every monthly rated workmen will be given an Engagement Memo in Form "B" and every daily rated workman will be given Engagement Memo, as in Form "C".

(c) (i) Every permanent workman shall be given a permanent Ticket in Form "D"

(ii) Every seasonal workman will be given as in Form "E"

(iii) Every temporary workman will be given a ticket as in Form "F"

(iv) A Probationer will be given a ticket in Form "G"

(v) Every apprentice will be given a ticket as in Form "H"

(vi) Every substitute workman will be given a ticket as in Form "I"

(d) The ticket shall be surrendered by a workman at the time he ceases to be employed or if his classification is changed. Should a workman lose or at the time he ceases to be employed fail to deliver his ticket, he shall be liable to pay a sum of annas 2 for the cost thereof".

10. It is evident that a daily rated workman is required to be given Engagement Memo as in Form "C" and temporary workman a ticket as in Form "F". The Respondents could have produced relevant material to demonstrate that the Petitioner was a casual or temporary workman but they do not.

11. Under the circumstances it is not possible for me to accept the Respondents' case that the Petitioner was engaged to meet any casual requirement of the

Mills, The word "casual" in the context of employment normally means Irregular or a happening by chance. Having allowed the Petitioner to work as sheet writer/ weighment clerk successively during the major part of three crushing seasons, the Respondents cannot be permitted, in absence of any material, to say that the appointment of the Petitioner was made to meet any casual requirement occurring by chance. The Petitioner has to be treated as a seasonal workman entitled to the relief's claimed in the writ petition.

12. It may be pertinent to quote as below the provisions from the Standing Orders, 1988 governing the employment of a seasonal workman:

K. Special Conditions governing employment of Seasonal Workman

1. A seasonal workman who has worked or, but for the illness or any other Commissioner cause would have worked under a factory during the whole of the second half of the last preceding season will be employed by the factory in the current season.

EXPLANATION--Unauthorised absence during the second half of the last preceding season of a workman has not been validly 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 workman who worked during the last season will be put on his old Job whether he was in the "R" shift or in any of the usual shifts.

However, if the exigencies of work so require, the management may transfer a workman from one job to another 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. Whether owing to trade reasons or other reasons necessary for a bonafide lay off, as given in Standing Order J, it becomes necessary for a factory so to do, It may discharge seasonal workman before the close of the season with the previous permission of the State Labour Commissioner, or if he so directs, of a Deputy Labour Commissioner or the Regional Assistant Labour Commissioner of the area and after paying such compensation to the discharged workman, as may be determined by the authority granting the permission.

13. In the result the writ petition succeeds and is allowed The Respondents are directed to treat the Petitioner as a seasonal workman and give him the benefit and privileges admissible under the provisions of the Standing Orders, 1988 read with Notification dated 31st January, 1991.

14. Parties to bear their own costs.