

(2004) 11 AHC CK 0255

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17769 of 1992

Brij Pal Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 3

Citation : (2005) 1 ESC 557 : (2005) 105 FLR 75 : (2005) 1 UPLBEC 1022

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Y.K. Sinha, for the Appellant; Sudhir Chandra, Kavin Gulati, Bharti Sapru and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

2. This writ petition has been filed by the petitioners against the award dated 22.10.1991 in Adjudication Case No. 32/90 passed by the Labour Court (II), U.P., Meerut.

3. Petitioner No. 1 was employed as Seasonal Weighment Clerk in Mawana Sugar Works, Mawana, District Meerut during the seasons 1982-83 to 1985-86. According to the petitioner-workman he was not employed in the season of 1986-87, which started w.e.f. 24.10.1986. He raised an industrial dispute which was referred to the aforesaid Labour Court.

4. The case of the employers before the Labour Court was that the petitioner-workman was employed in the season of 1985-86 from 1.1.1986 to 13.3.1986. The season of 1985-86 lasted on 4.4.1986. Thus, the workman did not work for full season or in the later half of the aforesaid season of 1985-86, He also did not report for duty in the next season of 1986-87. It was further the case of the employers that the workman did not get his licence forwarded for renewal through the employers.

5. The Labour Court framed seven additional issues and held on the basis of oral evidence that it is not probable that the workman did not present himself for duty in the season of 1986-87. It further held that he was only a Seasonal Weighment Clerk and on this ground the Labour Court granted the relief of reinstatement to the petitioner-workman with wages for the season of 1986-87.

6. The workman filed a review application against the award claiming that he is entitled to reinstatement with continuity of service and full back wages for all subsequent seasons.

7. The Labour Court rejected the review application vide order dated 27.2.1992 holding that there was no pleading as to when the subsequent seasons started and ended and that the relief for employment in subsequent seasons was beyond the scope of reference which was limited to matter of termination from 24.10.1986. It was also held that in view of the language of the reference neither the workman could be declared seasonal nor was he seasonal and there was no apparent mistake in the award.

8. This writ petition has been filed challenging the validity and correctness of the award dated 22.10.1991 and order dated 27.2.1992 rejecting the review application, praying that, part of the award and order be quashed by which the relief had been limited to the season of 1986-87 only.

9. Admittedly the petitioner was a seasonal workman. The terms and conditions of his employment are governed by statutory Standing Orders framed by the State Government u/s 3 (b) of the U.P. Industrial Disputes Act, 1947. The Standing Order K(1) provides as under :-

"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 will be employed by the factory in the current season.

Explanation.-Unauthorized absence during the second half of the last preceding season of a workman 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."

10. The workman produced no evidence that he had worked for the full season in 1985-86. According to the documentary evidence of the employers he worked for ten days only in the later half of the season of 1985-86. There is no evidence that the workman ever reported for duty in any subsequent season after the season of 1985-86.

11. A seasonal workman is entitled to wages and employment only if he presents himself for duty in the subsequent seasons. A "seasonal workman" is defined in Clause B (ii) and "temporary workman" is defined in Clause B (iii) of the

Standing Order as under ;

"B. Classification of Workmen.-(1) Workmen shall be classed as-

- (i) Permanent;
- (ii) Seasonal;
- (iii) Temporary;
- (iv) Probationers;
- (v) Apprentices; and
- (vi) Substitutes.

(ii) A "seasonal workman" is one who is engaged only for the crushing season:

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 well 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.

(iii) 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."

12. From the above it is evident that seasonal workman is to be given employment in subsequent seasons if he is a retainer or presents himself for duty. The Labour Court did not declare the petitioner as a retainer or a seasonal employee. In fact the Labour Court has held that such a relief was beyond the scope of reference. The question regarding payment of wages for subsequent seasons depends upon evidence. In Pannijee Sugar and General Mills Vs. Its Workmen, , Panniji Sugar and General Mills v. Its Workmen, the Apex Court held that "the question of back wages has to be decided having regard to the fact that the worker has admittedly been a seasonal worker" and the Labour Court would take into consideration evidence, if any.

13. Since there is no evidence about working of the workman in subsequent seasons continuity of service cannot be awarded to a seasonal workman automatically. There is also no evidence that the petitioner could not work in the full season due to any illness or other unavoidable circumstances. The petitioner in support of his case for being granted the relief referred to the case of Ganga Kisan Sahkari Chini Mills v. State of U.P. (Writ Petition No. 4906 of 1990), decided on 19.8.2004. In that case the Labour Court on the basis of evidence had found that the workman had worked for the entire season of 1984-85 and was called for work in the season of 1985-86. It was further held in that case that "the question whether the petitioner had worked for the entire season is based on appreciation of record and documents".

14. Thus, the finding in that case was held not to be arbitrary or capricious and the Court did not interfere with the award of the Labour Court.

15. The case in question in this writ petition is distinguishable as there is no evidence or finding that the petitioner worked for the whole of the season of 1985-86 or that he was called or he presented himself for work in the subsequent seasons.

16. The Counsel for the respondents has relied upon the case of Mukand Ltd. Vs. Mukand Staff and Officers' Association, In this case the Apex Court held that it is settled law that in the absence of a plea no amount of evidence led in relation thereto can be looked into.

17. On a perusal of the written statement of the petitioner (Annexure 5 to the writ petition), I find no plea that the workman ever worked in the whole or the later part of the season 1985-86. In his written statement filed on 16.5.1988 he has not raised any plea that he worked in the entire season of 1985-86 or 1986-87. He also did not take the stand in his pleadings that he reported for work in the season of 1986-87 or subsequent seasons. There is also no evidence or pleading that he was a permanent seasonal employee. All that is said is that he had worked in the earlier season. A seasonal employee is engaged only to work in the season. The Labour Court has, therefore, rightly allowed the relief of reinstatement and back wages to the petitioner-worker for the season of 1986-87 and not for any subsequent seasons in the facts and circumstances of the case.

18. The findings of the Labour Court in the impugned order that in view of the evidence and pleadings the workman could not be awarded wages for the subsequent seasons are not illegal and no interference is required.

19. For the reasons stated above, this writ petition fails and is dismissed. No order as to costs. Petition dismissed.