

(2013) 01 AHC CK 0451

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20095 of 2000

DCM Sriram Industries Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court II and Another

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15

Citation : (2013) 5 AWC 4784 : (2013) 138 FLR 585

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : T. Agarwala, S.D. Singh and Vivek Saran, for the Appellant; B. Maryam, C.S.C. and K.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—This is a writ petition filed by the petitioner who is also running a Sugar Unit known as Daurala Sugar Works, Daurala District Meerut challenging the award of the Labour Court, Meerut dated 2.9.1999 passed in Adjudication Case No. 131 of 1997. The facts of the case, briefly stated, are that the respondent No. 2-Hussain Pal claimed to have been appointed as Weighment clerk in the concerned Sugar Unit and his services are stated to have been terminated without giving any reason on 15.4.1996. However, it is stated that the reasons for terminating the services of respondent No. 2 were given in the order itself to the effect that the respondent No. 2 had issued forged Parchees showing fraudulent purchase of sugar cane. A first information report was also lodged against the respondent No. 2 information of which was also published in the Dainik Jagran news paper on 2.5.1996. On behalf of the employer a written statement 7-A was filed wherein it was stated that the services of the respondent No. 2 were infact terminated on 18.4.1996 at 8 a.m. and not on 15.4.1996 and, therefore, the reference order itself was bad. The case of the petitioner further was that the respondent No. 2 was not a seasonal worker but was engaged in a purely temporary capacity during the crushing season 1989-90 and thereafter he

worked during the crushing season from March, 1990 to June, 1990 for a period of 68 days. On completion of the crushing season his services came to an end automatically. When the crushing season 1992-93 commenced the respondent No. 2 gave an application before the management to be again engaged as a Weighment Clerk and the management by oral orders engaged him as a temporary Weighment Clerk. Thereafter as and when his services were required the respondent No. 2 continued to be engaged by the petitioner. The case of the respondent No. 2 further was that he worked continuously during the crushing season 1989-90 up to 1994-95. It was also stated that in the crushing season 1995-96 reservation orders were issued u/s 15 of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 and because the respondent No. 2 had worked previously in the earlier crushing season, therefore, he was again engaged by the petitioner-management during the crushing season 1995-96 for the purchase of sugar cane as a temporary Weighment Clerk. During the crushing season of 1995-96 he worked as a temporary Weighment Clerk on 5.3.1996 and 6.3.1996 in the Sugar Cane Purchase Center, Chur.

2. The case of the management before the Labour Court was that during the crushing season of 1995-96, the respondent No. 2 had been engaged on 5.3.1996 and 6.3.1996 at the Sugar Cane Purchase Center Chur under instructions that he was not to issue any purchase Parchees against the Rules and purchase Parchee was to be issued only on verifying the Society Parchee from the Growers List. On 4.8.1996 a letter was issued to the petitioner-management from the Secretary Incharge, Cooperative Cane Development Union Ltd., Daurala which was received by the management on 8.4.1996 wherein it was alleged that in the Sugar Cane Center, Chur on 5.3.1996 and 6.3.1996 the concerned workman-respondent No. 2 had purchased sugar cane allegedly on 59 Society Parchees out of which on investigation 40 Society Parchees were found to be forged documents and that these 40 Parchees had not been issued by the Society and yet the respondent No. 2 had shown these Parchees in the Grower's Daily Purchase Report. Accordingly a first information report was also lodged against the respondent No. 2. On a preliminary investigation conducted by the management the allegations made by the Secretary Incharge, Cooperative Cane Development Union Ltd. dated 8.4.1996 were found to be correct which resulted in lost of confidence of the management in the respondent No. 2 on account of which the order dated 15.4.1996 was passed terminating the services of the respondent No. 2.

Aggrieved by the said order dated 15.4.1996, the respondent No. 2 raised an industrial dispute which was referred by the State Government to the Labour Court by Notification dated 3.11.1997 in exercise of powers u/s K of the U.P. Industrial Disputes Act, 1947 and accordingly an Adjudication Case No. 131 of 1997 was instituted. The reference order for consideration of the Labour Court was as to whether the order of termination of the services of the respondent No. 2 by the order dated 15.4.1996 was legal and valid and if not what relief the respondent No. 2 was entitled to.

3. The Labour Court after considering the various submissions of the respondent No. 2 as well as of the management and the documents on record came to the conclusion that the order dated 15.4.1996 terminating the services of the respondent No. 2 was an illegal order and it accordingly directed the reinstatement of the respondent No. 2 in service on the same wages as drawn by him plus 50% of other dues as the respondent No. 2 would otherwise be entitled to. The Labour Court further directed that the respondent No. 2 workman would also be entitled to the entire wages from the date of the award. Hence the present writ petition.

4. I have heard Shri S.D. Singh, learned Counsel for the petitioner and the learned Standing Counsel representing respondent No. 1. List has been revised. No one appears for the respondent No. 2, although a counter-affidavit has been filed by the respondent No. 2.

5. Shri S.D. Singh, learned Counsel for the petitioner submitted that the respondent No. 2 would not fall within the category of workman as workman is defined in Clause B of the Standing Orders Covering The Condition of Employment of Workmen In Vacuum Pan Sugar Factories In U.P. (hereinafter referred to as the Standing Orders) inasmuch as the respondent No. 2 was engaged as a temporary Weighment Clerk and he was not a Seasonal Workman.

However, Clause B of the Standing Orders reads as under:

B. Classification of Workmen-

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

6. Thus, it cannot be disputed that in view of Clause B(iii) of the Standing Order the respondent No. 2 was a workman and duly engaged by the petitioner-management.

7. Shri S.D. Singh further submitted that when a particular crushing season comes to an end the workman would be entitled to be engaged in the subsequent crushing season only if he has worked during the entire second half of the previous crushing season as provided in clause K of the Standing Orders, which reads 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.--Unauthorised 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.

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.

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8. He further submitted that a workman who has worked during the entire second half of the crushing season would also be entitled to Retainer Allowance under the U.P. Payment of Retaining Allowances to Unskilled Seasonal Workmen of Sugar Factories Order, 1972. Clause 4 of the said order reads as under:

4. Eligibility for retaining allowance.--(i) The above retaining allowance shall be paid to those unskilled seasonal workmen who have or would have worked but, for illness or any other unavoidable cause, in a factory during whole of the second-half of the last season preceding; provided that labour employed by or through contractors shall be excluded for purposes of this order.

(ii) The retaining allowance shall be paid only after the workman has worked for at least two months in the concerned factory in the next cane crushing season that is in the season immediately following the off-season in respect of which the retaining allowance is payable.

9. It was also submitted that on the own showing of the respondent No. 2 he worked during the crushing season 1989-90 and thereafter he was engaged in the crushing season 1994-95 and 1995-96, therefore, it could not be said that the respondent No. 2 had worked during the entire second-half of the previous crushing season if 1994-95 is to be taken as the concerned crushing season. He further submitted that the respondent No. 2 had not even filed the copies of the Retaining Allowance slips issued to him before the Labour Court which would be proved enough of his payment to show that he had worked in the entire second half of the previous crushing season.

10. Learned Counsel for the petitioner further referred to the instructions issued by the Daurala Sugar Works-petitioner-management in (Paragraph 2) of which specific instructions have been outlined for the Weighment Clerk stationed at the various Center for the crushing season 1995-96. In paragraph 2 of the instructions it has been clearly mentioned that the Weighment Clerk would purchase sugar cane against indents issued by the Cane Growers Cooperative Society and the references of such Parchees would be entered in the Register

which is available at the Center for cross reference and verification and the weighment would be made only on the basis of the Parchees issued by the Cane Growers Cooperative Society. After the weighment is made a stamp "weighed" would be affixed on the Parchee so that the said Parchee would not be and could not be used again. After the weighment had been made the Mill Clerk and the Society Clerk would affix their signatures on the Mill Parchee as well as the Society Parchee.

11. A further reference was made by Shri S.D. Singh to the complaint which was forwarded by Shri Jhabbar Singh, the Secretary Incharge of the Cane Growers Cooperative Society, filed as Annexure-4 to the writ petition, wherein Shri Jhabbar Singh has specifically alleged that on 5.3.1996 out of total 44 Parchees 25 Parchees issued by the respondent No. 2 were found to be forged and on 6.3.1996 15 Parchees issued by the respondent No. 2 were found to be forged. Shri S.D. Singh also took the Court through the statement of Jhabbar Singh on affidavit dated 6.8.1998, filed as Annexure-13 to the writ petition, wherein Jhabbar Singh has outlined the procedure for issue of Parchees by the Society and the follow up action to be taken by the Weighment Clerk and has thereafter stated that when he had conducted the enquiry earlier and tried to make cross reference and verify the entries in the Parchees it was found that the Parchees had never been issued by the Society and yet they were claimed to be issued by the respondent No. 2.

12. Learned Counsel for the petitioner then referred to the statement of Shri K.P. Singh, Cane Manager, Daurala Sugar Works, Daurala-petitioner-management who had conducted the enquiry/investigation on the basis of the complaint made by Shri Jhabbar Singh, Secretary Incharge of the Cane Growers Cooperative Society and in his statement Shri K.P. Singh has stated that as per procedure a cane grower obtains the Parchees from the Cane Growers Society and then comes to the Sugar Unit with the said Parchee where his Truck/Tractor or stock of sugar cane is weighed on the basis of the Parchees and thereafter the necessary entries are made on the Parchees as well as in the Register for future cross reference so that the said Parchee may not be reused. The said K.P. Singh had also stated that for 1995-96 also due instructions had been issued to all the Weighment Clerks, copy of which was also filed as paper No. 18 before the Labour Court, and from perusal of which it would be noticed that the respondent No. 2 had signed on these instructions and, therefore, he had notice of the instructions. He further stated that a security bond of Rs. 20,000/- was taken from the respondent No. 2 as provided under the rule for issue of license to the Weighment Clerk to function as such. The bond was submitted by the respondent No. 2 in October, 1994 and was submitted by the respondent No. 2 himself and as such he was authorised to purchase cane from the cane growers on the basis of the Parchees submitted by the cane growers.

13. A reference has also been made to the written statement filed on behalf of the management, which is Annexure-8 to the writ petition and in paragraph 18

thereof it has been stated by the management that a complaint dated 8.4.1996 was received from the Secretary Incharge, Cane Development Union Ltd. Daurala which was received by the management on 9.4.1996, wherein it was mentioned that while the concerned workman (respondent No. 2) was on duty at Chur-A, Cane Purchase Center for purchase of sugar cane on behalf of the Factory on 5.3.1996 and 6.3.1996 he had shown purchase of sugar cane against 59 Society Parchees but during investigation it was found that out of these 59 Parchees issued by the Society 40 Society Parchees were forged and fictitious. A rejoinder reply given by the respondent No. 2 to this written statement has been filed as Annexure-9 to the writ petition and in paragraph 7 thereof all that has been stated is that the so called alleged Parchees related to one Sharan Veer Singh, the Society Clerk and not to the respondent No. 2 and no departmental or disciplinary action or other action was taken against the said Sharan Veer Singh. However, respondent No. 2 has not been able to explain as to how his signatures came to be found on the said Parchees. The rejoinder statement was filed on behalf of the management (filed as Annexure-10 to the writ petition) and in paragraph 5 thereof it has been stated by the management in no uncertain terms that no Society Weighment Clerk was present at the Center on 5.3.1996 and 6.3.1996, when the concerned workman namely, respondent No. 2 had issued the forged and fictitious purchase Parchees and most interesting aspect of this entire act was that one of the beneficiaries of the forged Parchees was the own father of the respondent No. 2. This averment in the rejoinder statement of the management has been denied by the respondent in his statement filed on 31.3.1998 before the Labour Court, which has been filed as Annexure-11 to the writ petition, wherein at internal page 4 all that he has stated is that he was not aware of how much land there is in the name of his father as he lives separately from his father.

14. It is rather surprising that the respondent No. 2 issued fictitious Parchees bearing his signatures of which mere is no reference in the Society nor in the Register maintained for the purposes from which a cross-reference could be made and that one of the beneficiaries of this illegal act of the respondent No. 2 was his own father but when the respondent No. 2 was confronted with this fact he denied having any knowledge of how much land his father was in possession of. A reference is also made to the statement of Shri K.P. Singh wherein it is stated that from a reading of List 13-B 1, paper No. 3 it would be seen that on 5.3.1996 at the Chur-A center, the respondent No. 2 had shown purchased of sugar cane at Sl. Nos. 25 and 26 two times on the Parchee No. 4284. It is interesting that if the Parchee No. 4284 had been utilized once on 5.3.1996 against sl. No. 25 it could not have been used again against sl. No. 26 in view of the specific instructions issued by the Executive Director of the Management, which has already been referred to herein above. It is also interesting to note that with regard to Parchee No. 4284 on both the occasions the seller of sugar cane has been shown to be one Raj Singh son of Tirkha.

15. Again against Parchee No. 4272 a purchase of 22.577 quintals of sugar cane

has been shown by the respondent No. 2 as purchased on 5.3.1996 and against the same Parchee a purchase of 21.78 quintals of sugar cane purchase has been shown on 6.3.1996. In this also the seller of sugar cane on both the occasions was Raj Singh son of Tirkha. It would be relevant to note here that Raj Singh son of Tirkha is the father of the respondent No. 2. Thus there is absolutely no doubt that the respondent No. 2 had issued fictitious and forged purchase Parchees which had not been issued by the Cane Growers Society and that one of the beneficiaries of his illegal act was his own father.

16. It is rather surprising that this abundance of evidence has neither been referred to nor considered by the Labour Court in its proper perspective. Even if it is accepted for the time being that the respondent No. 2 was a temporary workman and that under clause B of the Standing Order even a temporary workman has been classed as "workman" but the fact remains that from the mass of documentary evidence on record it could not be said that the management had not lost confidence in the respondent No. 2.

17. The Labour Court has also held that since no enquiry was held against the respondent No. 2, therefore, the order of termination dated 15.4.1996 was bad in law. However, it has come on the record that an enquiry was held by the Department and an enquiry was also held by the Society concerned and it is only thereafter that action for termination of services of the respondent No. 2 was taken.

18. It is then pointed out by the learned Counsel for the petitioner that in terms of the interim order dated 15.2000 of this Court a sum of Rs. 2,00,000/- has already been paid to the respondent No. 2. The interim order dated 1.5.2000 reads as follows:--

Issue notice to the respondent No. 2 returnable within three weeks.

Meanwhile, if the petitioner complies with the provisions of section 17-B of the Industrial Disputes Act, the effect and operation of the award in question shall remain stayed.

19. The Supreme Court in the case of U.P.S.R.T.C. v. Surendra Singh, rendered in Civil Appeal No. 359 of 2007, arising out of SLP No. 882 of 2007 has held that the provisions of section 17-B of the Industrial Disputes Act, 1947 has no application to the cases falling within the ambit of the U.P. Industrial Disputes Act, 1947. The judgment of the Supreme Court on this point being a short one is quoted below in its entirety:

Leave granted.

This appeal has been filed by the U.P. State Road Transport Corporation against an interim order passed by the High Court of Allahabad by which the High Court has modified the interim order granted by it staying the operation of the award to the extent that the appellant shall comply with the provisions of section 17-B of the Industrial Dispute Act, 1947.

It is not in dispute that the provisions of section 17-B of the Industrial Disputes Act do not exist in the U.P. Industrial Disputes Act. In this view of the matter, question of compliance of the said provision does not arise at all.

Accordingly, the impugned order is set aside. This, however, shall not preclude the respondent from making fresh application for grant of interim relief in his favour in accordance with law. Since the appeal is pending, we direct the High Court to dispose of the appeal preferred by the appellant within a period of six months from this date positively without granting any unnecessary adjournments to either of the parties. Accordingly, the appeal is allowed to the extent indicated above. There shall be no order as to costs.

20. Therefore, in the facts and circumstances of the case and in the face of overwhelming evidence on record which have been filed as annexures to the writ petition and which were also filed as exhibits before the Labour Court including the statement, rejoinder statement, reply, rejoinder reply of the parties, the only irresistible conclusion that the Court can draw is that the award dated 2.9.1999 passed by the Labour Court II, Meerut in Adjudication Case No. 131 of 1997 has been passed without application of mind and is absolutely illegal and in ignorance of material evidence on record and is, therefore, quashed. The writ petition is allowed. There shall be no order as to cost.

It is however provided, to meet the ends of justice blended with equity, that the amount which has been paid under the interim order of this Court dated 1.5.2000 to the respondent No. 2-workman shall not be recovered from him.