

(2003) 07 AHC CK 0095
In the Allahabad High Court
Case No : Writ Petition No. 4340 (S/S) of 2003

Devendra Nath Misra

APPELLANT

Vs

U.P. Cooperative Sugar Federation and Others

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Citation : (2003) 4 AWC 3305

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : L.P. Misra, for the Appellant; C.S.C. and Raghvendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—Heard the learned counsel for the petitioner and Shri Raghvendra Singh, learned counsel for the opposite party Nos. 1, 2 and 3 and the learned Standing counsel for the opposite party No. 4.

2. This writ petition has been filed for quashing the oral termination of the petitioner with effect from 21.5.2003 and the impugned order dated 28.4.2003, passed by the opposite party No. 3 General Manager, Kisan Sahkari Chini Mills Ltd., Mahmudabad (Oudh), Sitapur, Annexure-1 to the writ petition and further for a writ of mandamus commanding the opposite parties to regularise the services of the petitioner as a "Fitter" Grade-II and to pay him his salary regularly every month as admissible to the regularly appointed Fitter Grade-II and further a writ of mandamus commanding the opposite parties to make payment of wages from 20.5.1997 treating the petitioner as Fitter Grade-II.

3. After hearing the parties and after perusing the documents on record, it appears that the petitioner is a seasonal employee of Kisan Sahkari Chini Mills Ltd. He filed a Writ Petition No. 1307 of 1987 which was decided finally on 29.9.1999. This writ petition was filed for staying his termination of services and for his regularisation on the post of Fitter. An interim order was passed in that

writ petition that the petitioner shall be taken on seasonal basis and he shall be treated on seasonal basis or temporary depending on the terms on which the extra three persons were working as per statement of the learned counsel for the petitioner. When this writ petition was finally disposed of on 29.9.1999, the prayer for modification of that order was rejected by this Court because the Special Appeal filed against that interim order, was also dismissed. Operative portion of that judgment dated 29.9.1999 is as follows :

".....Since the petitioner was engaged no daily wages in 1983 and continued to work till 1985 and thereafter he was discontinued and the petitioner's services were discontinued without observing the provision of Section 6N of the U. P. Industrial Disputes Act, and therefore, the relationship of the master and servant did not snap and continue to exist as held by the Supreme Court in Lal Mohd. and another v. I.R.C. Co. Ltd. and others (1999) 1 SCC 593.

Thus, the opposite parties are directed to treat the petitioner into service. However, the petitioner shall not be paid any back wages till 19.5.1997 and he shall be entitled for the back wages from 20.5.1997 but for the other purposes he would be deemed to be in service and he shall be considered for his regularisation, the order for the same shall be passed within a month from the date of production of certified copy of this order.

Petition is disposed of finally"

4, The petitioner was considered for regularisation by the competent authority vide order dated 26.8.2002. Even after that a contempt petition was filed. In the Contempt Petition No. 518 (c) of 2002, this Court directed that the question of his regularisation shall also be considered by a speaking and reasoned order. Then a fresh order was passed on 7.4.2003. The competent authority again considered and passed the impugned order, Annexure-1 on 28.4.2003. It is mentioned in the Impugned order according to staffing pattern, there is surplus staff in the mill and there is no vacant post and because the sugar mill has a financial loss, the U. P. Cooperative Sugar Mills Federation has taken a decision that no appointment of any nature or regularisation or promotion shall be made and in all the sugar mills of the Federation Voluntarily Retirement Scheme has been applied because of these circumstances, the regularisation of the petitioner is not possible.

5. I find that the order passed by the contempt court appears to have been complied with. There is no illegality in the order. There is no force in the contention raised in this writ petition. The learned counsel for the opposite parties has given a statement that the services of the petitioner have not been terminated but since he is a seasonal employee, he is ceased to work because of the closure of the sugar factory after a season was over. He has also given a statement that the petitioner will be taken on work on the commencement of the new season in the same capacity on which he was working before the closure of

the season. He has further referred a decision of the Hon"ble Supreme Court in Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc., , in which the Hon"ble Supreme Court has held that cessation of seasonal worker would not amount to retrenchment. So there is no force in the contention of the petitioner that he has been terminated by oral order.

6. I find that it is only a temporary ceasure of the seasonal employee and in view of the statement given by Shri Raghvendra Singh, Advocate, the petitioner shall be taken on work as seasonal employee on the commencement of the season.

7. This writ petition is devoid of any merit.

8. In view of the above, the writ petition is dismissed at the admission stage.