
(2003) 08 AHC CK 0041

In the Allahabad High Court

Case No : C.M.W.P. No's. 740, 741, 743 and 21970 of 1992

Ganga Kisan Sahkari Chini Mills Ltd.

APPELLANT

Vs

Tehsildar and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 61(1), 6H(1), 6N

Citation : (2003) 6 AWC 4861

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.K. Misra, for the Appellant; Shyam Narain and S.C., for the Respondent

Final Decision : Dismissed

Judgement

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

2. These Writ Petition Nos. 740 of 1992, 741 of 1992 and 743 of 1992, were filed by the Petitioner against the awards of the Labour Court-II, Meerut. No interim order was granted in the petitions. During the pendency of the writ petitions, citations were issued for recovery of Rs. 71,260 plus interest in respect of each of the Respondent-workman. The Petitioner has challenged the recovery citation in Writ Petition No. 21970 of 1992. These writ petitions shall be dealt with one by one hereinafter in the judgment. The services of workman Nirbhay Singh, Navin Kumar and Jaivir Singh, were terminated by the employer with effect from 6.8.1995.

3. The Writ Petition No. 21970 of 1992, has been filed at the instance of the Ganga Kisan Sahkari Chini Mills Ltd., Morana, Muzaffarnagar, for quashing the impugned order dated 15th May, 1992 and the impugned citation dated 7th February, 1992, Annexures-4 and 5 respectively to the writ petition.

4. The services of workmen Nirbhay Singh, Navin Kumar and Jaivir Singh, who are alleged to have been engaged as Juice Heater Attendants in trial season

1984-85, were terminated by the employer with effect from 6.8.1995.

5. All the workmen raised industrial disputes claiming that their services had been illegally terminated without compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947, which were referred to by the State Government in exercise of powers u/s 4K of the Industrial Disputes Act, 1947 to the labour court-II at Meerut. The following reference was made by the State Government for adjudication before Respondent No. 1 in respect of Nirbhay Singh, which was registered as Adjudication Case No. 161 of 1989:

"Kya Sewayojako dwara apne shramik Nirbhay Singh putra Shri Kalu Ram, juice heater attendant ki sewaen dinank 6.3.1985 se samapt kiya jana uchit tatha/athwa vaidhanki hai? Yadi nahi, to sambandhit shramik kya labh/anutosh (relief) pane ka adhikari hai, tatha kis anya vivran Sahit?"

6. Writ Petition No. 740 of 1992 has been filed by the employer challenging the award dated 29.1.1991, passed by Respondent No. 1 in Adjudication Case No. 161 of 1989 granting the relief of reinstatement and back wages to the workman.

7. The industrial dispute raised by the workman Jaivir Singh was referred to the labour court-II, Meerut, where it was registered as Adjudication Case No. 164 of 1989:

"Kya Sewayojako dwara apne shramik Jai Veer Singh (putra Shri Ram Lal) P. H. Recorder ki sewaen dinank 6.3.1985 se samapt kiya jana uchit tatha/athwa vaidhanik hai? Yadi nahi, to sambandhit shramik kya labh/anutosh (relief) pane ka adhikari hai, tatha kis anya vivran Sahit?"

8. Writ Petition No. 741 of 1992 has been filed by the Petitioner challenging the award dated 25.1.1991 passed by Respondent No. 1 in Adjudication Case No. 164 of 1989 by which the relief of reinstatement with back wages has been granted to the workman.

9. In Writ Petition No. 743 of 1992 the Petitioner has challenged the award dated 25.1.1991. passed by the labour court-II, Meerut, by which the relief of reinstatement and back wages was granted. The workman Navin Kumar also raised an industrial dispute, which was also referred to by the State Government to the labour court-II, Meerut, where it was registered as Adjudication Case No. 162 of 1989:

"Kya Sewayojako dwara apne shramik Navin Kumar (putra Shri Khoru Mal) juice heater attendant ki sewaen dinank 6.3.1985 se samapt kiya jana uchit tatha/athwa vaidhanik hai? Yadi nahi, to sambandhit shramik kya labh/anutosh (relief) pane ka adhikari hai, tatha kis anya vivran Sahit?"

10. Respondent/workman claimed themselves to be permanent appointees and it was pleaded that the provisions of the Industrial Disputes Act and the standing order has been violated.

11. The case of the Petitioner in all these case was that Ganga Kisan Sahkari

Chini Mills Ltd. is a seasonal factory, commenced its trial season only in the year 1984-85 and certain persons were initially taken as casual employees on daily wage basis and they did not have any lien on any permanent or seasonal post, as the factory was to commence production after trial season 1984-85 was over after establishment of Sugar Factory before starting production.

12. It is submitted that this was done to ascertain whether the sugar factory started, proper functioning of its first season from the year 1985-86. It is stated that Respondent-workman was engaged in stop-gap arrangement only for the trial season after inviting applications from the public at large, in which Respondent No. 2 was not selected. It is further submitted that Respondent No. 2 joined the sugar factory on 16th November, 1984 and his services were dispensed with on 6.3.1985 and by any stretch of imagination Respondent No. 2 could not have completed 240 days of service in one calendar year and as such the provisions of Section 6N of the Industrial Disputes Act did not apply. It is also submitted that Respondent No. 2 has not filed any appointment letter to show that his appointment was made against any permanent post.

13. The award has been assailed in this petition on the grounds that (1) The labour court has travelled beyond the terms of reference by framing issue No. 1 as the nature of appointment was neither subject matter of reference nor the finding given by it on issue No. 1 was correct. (2) There was no evidence on record that the Respondent was a workman and was entitled to the protection under U.P. Industrial Disputes Act. (3) There was no appointment letter filed by the workman, which shows that Respondent No. 2 was not engaged in the trial season and though it was disbelieved by the labour court that appointment of the workman was against a permanent post, yet he was granted the relief of reinstatement with back wages and as such the award cannot be sustained.

14. It is apparent that after publication of the award the workman filed an application u/s 61(1) of the Industrial Disputes Act, 1947 and orders dated 18.11.1991, 19.11.1991 and 3.1.1992, were passed for recovery of the amount due to the workman under the award. Aggrieved by the recovery orders, the employers filed Writ Petition No. 21970 of 1992.

15. It is averred in Writ Petition No. 21970 of 1992 that the Petitioner received a notice from Tehsildar Jansath dated 15.5.1992 asking the Petitioner to pay the amount of back wages to workman/Respondent Nos. 4 to 6. It is alleged that prior to the said letter dated 15.5.1992, the Petitioner neither received any order of the Deputy Labour Commissioner in respect thereof nor any citation in pursuance thereof and the Petitioner for the first time came to know about recovery on receipt of the aforesaid letter dated 15.5.1992.

16. It is submitted that on receipt of notice the Petitioner came to know that ex parte orders in favour of three workman, namely, Nirbhay Singh, Navin Kumar and Jaivir Singh have been passed on 3.1.1992, 19.11.1991 and 18.11.1991 respectively in execution proceedings u/s 6H(1) of the U.P. Industrial Disputes

Act and an ex parte citation dated 7th February, 1992 has also been issued. All the orders of execution in pursuance of the recovery citation are without any notice or without any opportunity of hearing.

17. The workmen-Respondents disputed the stand of the employer that they have to complete 240 days. Sugar Factories is of seasonal nature. According to the standing orders applicable to the sugar factory, 120 days service is required.

18. The labour court has given finding of fact that the services of the workmen were terminated in illegal manner and they were entitled to be called for work in the next season also. I do not find any illegality in the award that the Respondents were selected and thereafter appointed on the post in the season from 16.11.1984 to 5.3.1985. It is alleged that in the trial season there was no production. The question of production in the trial season is reduced for tax purpose and is irrelevant in the contract. The workmen have worked in the season particularly later half of the season. The labour court has given categorical findings that the sugar factory worked for the whole of the season and the workers have worked in whole of the trial season and as such the employers could not have denied service to the employees in the next season.

19. Paragraphs 4 and 6 of U.P. Payment of Retaining Allowances to Unskilled Seasonal Workmen of Sugar Factories Order, 1972 has been defined 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.

6. Provision not to apply on new factories.-The provisions of this order shall not apply to new factories commencing crushing from 1971-72 or thereafter for a period of there seasons including the trial season."

20. A perusal of the reference order would show that it is in two parts. The first part deals with the question whether termination of services of the workmen is illegal and justified. The other part of the reference order is that if the termination is not found to be legal or justified, to what relief they are entitled to. Answering the first part of reference the labour court has held that termination of the services of the workmen was not legal and justified. Answering the second part the labour court has held that the workmen were entitled to call upon in the next season also.

21. Apart from the above, there is an admitted fact that in the writ petition no interim order was granted to the Petitioner and the award had to implement its logical conclusion for its execution. The workmen in the sugar factory are issued token showing their nature of appointment as to whether they are temporary, seasoned or permanent etc. Under Standing Orders Covering the Condition of Employment of Workmen in Vacuum Pan Sugar Factories in U.P. "Season" has

been defined as under:

"5. "Season" means the period commencing from the date when the crushing commences till the date when crushing ends: Provided that for these departments which are not in operation when crushing begins and which continue in operation after crushing ends, the "season" so far as it affects the workmen in those departments, shall commence with the date the department commences operation and shall end when the department ceases to be operated:

B. Classification of workmen-

1. Workmen shall be classed as:

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

22. The appointment of the workmen was neither permanent, as the permanent workmen have to complete their probationary period. There is no such averment that the workmen have completed their probation period. The probationer has been defined in Clause B (iv) of the Standing Orders:

"(iv) A "probationer" is one who is provisionally employed for a period to be specified by the management at the time of employment to fill a permanent vacancy or a new post of permanent nature and who may be confirmed at the completion of that period, if his services are found satisfactory. The probationary period shall not exceed six months:

Provided further that if after the expiry of the probationary period on orders are passed by the management, the period of probation shall be deemed to be six months:

Provided further that if after the expiry of the probationary period on orders are passed by the management, the probationer shall be deemed to have been confirmed."

23. The workmen failed to establish the nature of their appointment. No appointment letters were issued to them. The burden of proof lay heavily on the employer to discharge the same before the labour court to establish the nature of appointment of the workmen concerned.

24. The employers challenging the recovery certificate in Writ Petition No. 21970 of 1992 have stated that the proceedings u/s 6H(1) of the U.P. Industrial Disputes Act for implementation of the award is ex parte. It is nowhere stated

that they have not received summons and had no knowledge of the pendency of application filed by the workman u/s 6H(1) of the Act. In absence of these pleadings and supporting documents, the employers have miserably failed to show that the proceedings u/s 6H(1) of the Act were ex parte. Under the award, the workmen were entitled to get the amount due under recovery certificate. No illegality in the award or in the recovery certificate issued by the recovery authority could be established by the Petitioner. On the contrary the employers obtained interim order from this Court by filing fresh petition instead of making application in the writ petition in which award was challenged by them. This amounts to abuse of process of law.

25. For the reasons stated above, the writ petitions fail and are dismissed. The workmen are held to be entitled to the amount due under the recovery certificate as well as arrears of salary till date with 12% compound interest with half yearly rest. The interim order dated 17.6.1992 is vacated. No order as to costs.