
(2000) 08 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8762 of 1998

Gangeshwar Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2001) 1 UPLBEC 156

Hon'ble Judges : P.C. Verma, J

Bench : Single Bench

Judgement

P.C. Verma, J.—This writ petition has been filed by the petitioner M/s. Gangeshwar Limited, Deoband, Saharanpur challenging the award dated 16.1.1997 passed in Adjudication case No. 30/96.

2. A dispute was referred by the Government to the Labour Court vide notification dated 29.3.96 as to whether the removal/stopping of the workman Sri Om Prakash son of Sri Asharam on 1.11.1995 from work, was justified; if so, to what relief the workman was entitled to.

3. The case of the workman before the Tribunal was that the workman Om Prakash worked in the crushing season 1992-93, 1993-94 and 1994-95 as Weighment Clerk. His work was satisfactoiy but when the crushing season 1995-96 started from 1.1.1995 he was stopped from work which amounted to retrenchment though he was entitled to be allowed to continue in the crushing season 1995-96 as he was seasonal workman.

4. The case of the petitioner before the Tribunal was that the respondent No. 3 was a temporary workman. He was a temporary workman as classified under the standing orders.

5. After considering the statements filed by the parties and the statement of the witnesses examined by the parties the Tribunal held that the respondent No. 3 was a seasonal workman as he had worked in the following crushing seasons-

Crushing Season From To Workman Worked From To 1993-94 26.10.93 22.4.94
27.10.94 8.4.94 1994-95 21.10.94 23.4.95 30.10.94 18.4.95

6. Tribunal further found after considering the statement of the witnesses that the respondent No. 3 had worked in crushing season 1992-93 also, Accordingly the Tribunal treated the petitioner to be a seasonal workman and made award to the effect that discontinuing and removal of the workman from work from 1.11.1995 was illegal, not proper and, therefore, the Tribunal awarded the wages for the crushing season 1995-96 and 1996-97 and retaining allowance for the said period and further directed to reinstate the respondent No. 3 in the current crushing season. The reference was allowed with Rs. 2000/- costs.

7. The learned Counsel for the petitioner contended that the Tribunal fell into an error in not treating the respondent No. 3 as temporary workman as he was engaged on temporary basis and being a temporary workman he was not entitled to be engaged in next crushing season, therefore, the stopping of the respondent No. 3 from work from 1.11.1995 did not amount to termination or retrenchment as he had no right to be engaged in the next crushing season as he was a temporary workman.

8. The learned Counsel for the petitioner relied on a Division Bench judgment of this Court, which has been annexed with the writ petition, reported in 1993 (67) FLR 602, Kisan Sahkari Chini Mills Ltd. and Ors. v. Awadhesh Singh and Ors.. This was a case of Weighment Clerk in which he claimed that he was a seasonal workman not a temporary workman. The Court held that the petitioner of that petition was a temporary workman and could not be declared as seasonal workman and dismissed the writ petition. However, the Court observed in Para 8 of the judgment that "normally the controversy of the nature which is involved in the case should be decided by the Labour Court of Industrial Tribunal. Writ jurisdiction is not appropriate for resolving such a dispute. We would have dismissed the writ petition on the ground of alternative remedy before the Labour Court, but as the learned Single Judge has entertained the writ petition and decided on merit, we are also disposing of the special appeal.

9. Here in the present case after considering the pleadings of the parties and evidence led by the parties the Tribunal recorded a finding that the respondent No. 3 has worked in full season approximately, therefore, the respondent No. 3 was a seasonal workman.

10. The learned Counsel for the petitioner placed before this Court the definition of the Seasonal Workman and Temporary Workman as defined in Standing Orders covering the condition of employment of workman in Vacuum Pan Sugar Factories in U.P. Clause B of the Standing Order classifies the workman as under:

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

- (iv) Probationers,
- (v) Apprentices, and
- (vi) Substitutes.

11. A seasonal workman and temporary workman has been defined as under:

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.

12. 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.

A close scrutiny of the definition of the seasonal workman and the temporary workman shows that there is a clear-cut distinction. A temporary workman is one who is engaged for a casual nature of work or to fill a temporary need of extra hands.

13. In the instant case the petitioner was engaged as Weighment Clerk at the purchase center at Mill Gate. Purchase centers are opened to purchase the sugarcane supplied to the Sugar Factory and the Sugar Factory" runs till the cane is available the Cane Centers are run, therefore, the Cane Centers are run till the Sugar Factory is not closed. A particular Center may be opened by the Factory at some distance for purchase of cane for which the place is assigned to it by the Cane Commissioner from other reserved area of the Sugar Factory. At that center if a Weighment Clerk is engaged that will be an engagement to him under the need of extra hand but the engagement of a Weighment Clerk at purchase center at Mill Gate will not be an engagement of casual nature or to fill in a temporary need of extra hands. The Tribunal recorded a finding of fact that the respondent No. 3 was a seasonal workman after considering the entire evidence on record.

14. Learned counsel for the petitioner has not been able to show any perversity in the finding recorded by the Tribunal before this Court.

15. Learned Counsel for the petitioner placed before this Court the judgment of the Apex Court reported in *Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc., , etc.* in which the Hon"ble Supreme Court held that the engagement in crushing season and cessation would not amount to retrenchment, therefore, no relief could have been granted by the Tribunal. The Apex Court in the above judgment in paras 4 and 5 & hold as under-

Para 4.- It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were

taken into work for the season and consequent to closure of the season, they ceased to work.

Para 5.- The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal, However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them, in accordance with seniority and exigency of work.

16. In view of the aforesaid pronouncement of the judgment by the Supreme Court and in view of the directions given by the Supreme Court the impugned award of the Tribunal dated 16.1.1997 is modified in terms and directions issued by the Supreme Court under Article 142 of the Constitution of India which is binding on all. The petitioner is directed to engage the respondent No. 3 in every crushing season when the purchase centers are opened either at Mill Gate or an other place but no wages shall be paid for the crushing season 1995-96 and 1996- 97 and no retaining allowance for the above period shall be paid. The petitioner is also exempted from payment of costs awarded by the Tribunal.

Petition is disposed of in the manner indicated above.