

(1960) 12 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No. 239 & 240 of 1959

Jaswant Sugar Mills Ltd., Meerut

APPELLANT

Vs

Shri Badri Prasad and Others

RESPONDENT

Date of Decision : 14-12-1960

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 2

Citation : AIR 1967 SC 513 : (1961) 3 FLR 83 : (1961) 1 LLJ 649

Hon'ble Judges : P. B. Gajendragadkar, J;K. N. Wanchoo, J;K. C. Das Gupta, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

K.C. Das Gupta, J.—These appeals arise out of an industrial dispute between the appellant company and some of its workmen. The dispute was set out in the order of reference in these terms:-

"Whether the employers should be required to designate their 15 workmen mentioned in the annexure as permanent workmen. If so, with what details?"

As regards 4 out of these 15 workmen the dispute was settled amicably between the parties and so the Tribunal had to deal with the case of the remaining 11 workmen. The workmen's case was that they were permanent workmen within the meaning of the Standing Orders of the company. The company's case on the other hand was that all these 11 were seasonal workmen. In answering the question whether these workmen or any of them were permanent workmen or not the Tribunal had first to construe the definition of a permanent workman as in the Standing Orders and apply that construction to the facts found. The definition of a permanent workman in this Standing Order is in these words: "A permanent workman is one who is engaged in a permanent nature of work throughout the year and has completed his probationary period, if any." According to the Tribunal a proper reading of this definition leads to the conclusion that in order that the workmen concerned may claim the status of

permanent workmen two things are necessary, viz., (1) that they were engaged on a job of a permanent nature, and (2) they were engaged throughout the year on such a job. On a consideration of the evidence the Tribunal held that 7 of these workmen satisfied this test and so they had acquired the status of permanent workmen. As regards the remaining 4 the Tribunal held that they did not satisfy the test and, therefore, were not entitled to be designated as permanent workmen. Even as regards these 7 who according to the Tribunal had acquired the status of permanent workmen the Tribunal rejected their claim for the periods during which they had not been employed by the company. It directed however as regards these 7 that on appearing and applying within 15 days of the order to be put on work they shall be treated as permanent with effect from the date of their having completed one year's service and shall be paid full wages with effect from the date when they appear and apply to be put on work.

2. Both parties appealed to the Labour Appellate Tribunal. That Tribunal putting a different construction on the definition of permanent workman held that all the 11 had acquired the status of permanent workmen. Regarding the wages for the period of unemployment the Appellate Tribunal held that the ends of justice would be met by allowing these workmen 50 per cent of their wages for the period of their forced unemployment till their reinstatement. Accordingly, the Labour Appellate Tribunal dismissed the employer's appeal and allowed the workmen's appeal.

3. The main question for our consideration in the present appeal by the employer by special leave is the proper construction of the definition of a permanent workman. In deciding on the proper meaning to be attached to the words and phrases used in the definition it will be proper to consider the question in the background of the definition in the Standing Order of two other kinds of workmen, viz., Seasonal Workmen and Temporary Workmen. A Seasonal Workman is defined as one who is engaged for the crushing season only and/or may also be employed for the period necessary for cleaning and overhauling either before or after the season and is discharged after the work is finished. A Temporary Workman is defined as one who is engaged in the work of a temporary and casual nature or to fill in a temporary need of extra hands on permanent or temporary jobs.

4. Reading the three definitions together it is abundantly clear that while a seasonal workman is engaged in a job which lasts during the crushing season only, a temporary workman may be engaged either for work of a temporary or casual nature or work of a permanent nature; but a permanent workman is one who is engaged on a permanent nature of work only. The distinction between a permanent workman engaged on work of a permanent nature and a temporary workman engaged on work of a permanent nature is in the fact that a temporary workman is engaged to fill in a temporary need of extra hands of permanent jobs. In this background it becomes clear that the words 'engaged on a

permanent nature of work throughout the year" were intended to mean "engaged on a permanent nature of work lasting throughout the year" and not "engaged throughout the year on a permanent nature of work." When a workman is engaged on a work of permanent nature which lasts throughout the year it is legitimate to expect that he would continue there permanently unless he has been engaged to fill in a temporary need. It will be unreasonable to think that the Standing Orders left a loop-hole for the employer to prevent a person engaged on a work of permanent nature which lasts throughout the year, from becoming permanent by the device of discharging him from time to time. By such a device it would be possible for the employer to prevent any workman from becoming permanent, even though the work on which he is engaged lasts throughout the year and is in its nature permanent. That could not have been the intention when the Standing Orders were framed. It stands much more to reason that in speaking of a workman being engaged on a permanent nature of work throughout the year, those who framed the Standing Orders proceeded on the assumption that if the work of a permanent nature lasts throughout the year a workman who has completed his probationary period, if any, will continue to be engaged in that work. We are, therefore, of opinion that the Appellate Tribunal was right in thinking that to be a permanent workman within the definition it is not necessary that the workman should be engaged throughout the year. What is necessary is that the work on which he is engaged is of a permanent nature and lasts throughout the year.

5. What, however, of a workman who is engaged on work of a permanent nature which lasts throughout the year but his own engagement is only to fill in a temporary need of extra hands ? It is clear that such a workman falls clearly within the definition of a temporary workman which has been set out above, though at the same time he may fall within the definition of a permanent workman. As, however, such a man falls within the narrower and special category of temporary workman it will not be reasonable to hold that he was sought to be included within the definition of a permanent workman in the Standing Orders. The proper construction of the definition of a permanent workman therefore is: A workman engaged on a work of permanent nature which lasts throughout the year and who has completed his probationary period, if any, not being one engaged to fill in a temporary need of extra hands on permanent jobs, e.g., in leave vacancies. It is not disputed before us that on the facts found all the 11 workmen satisfy this test. The conclusion of the Labour Appellate Tribunal that these 11 are all permanent workmen is therefore correct.

6. As regards their claim for back wages the position was that there was no evidence on either side that for the period during which they were not employed by the company they found employment elsewhere. The Appellate Tribunal rightly pointed out, however, that usually workmen in sugar factories are employed in agricultural operations for portions of off-season. Having regard to this it ordered the payment of 50 per cent of their wages for the period of their enforced unemployment by the company till their reinstatement. We do not see

any justification to interfere with this order.

7. The appeals are accordingly dismissed with costs.