
(1993) 05 AHC CK 0078
In the Allahabad High Court
Case No : Spl. Appeal No. 293 of 1993

Kisan Sahkari Chini Mills Ltd. and Others	APPELLANT
Vs	
Awadhesh Singh	RESPONDENT

Date of Decision : 20-05-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1993) AWC 1720 : (1994) 2 LLJ 1067 : (1993) 2 UPLBEC 1313

Hon'ble Judges : S.C. Mathur, C.J; R.A. Sharma, J

Bench : Division Bench

Advocate : A.K. Misra, for the Appellant; B.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Respondent was appointed on daily wages basis, as Sheet-Writer/Weighment Clerk in the appellants' sugar mill (hereinafter referred to as the mill) in crushing season 1988-89 and it is claimed that he continued to work in that capacity in subsequent Seasons upto 1990-91, but when the mill re-opened in the next crushing season on November 8, 1991 he was not called to join his duties. Accordingly he filed the writ petition for writ of mandamus directing the appellants, who are arrayed therein as respondents, to permit him to resume his duties as permanent Seasonal Sheet-Writer/Weighment Clerk in the mill. Prayer for payment of wages/salary from November 8, 1991, was also made. The appellants filed counter-affidavit in the above mentioned writ petition and in reply thereto the respondent has filed rejoinder affidavit. Supplementary counter and rejoinder affidavits were also exchanged between the parties,

2. Writ petition of the respondent was allowed by learned single Judge and directions were issued to the appellants to treat the respondent as seasonal workman and to give him the benefit and privilege admissible to such a workman under standing orders, 1988, read with notification issued u/s 3(b) of the U.P. Industrial Disputes Act. Appellants being aggrieved by the above judgment, have filed this appeal. We have heard learned counsel for the appellants and learned

counsel for the respondent.

3. The claim of the respondent to the effect that he worked in the whole crushing season of 1989-90 and continued to work in subsequent crushing season upto 1990-91, has been disputed by the appellants in the counter-and supplementary counter affidavits, wherein it has been stated that respondent was appointed on daily wages basis to meet the additional work which arose due to the notification of the cane Commissioner, whereby eight new cane centres, which were earlier in reserve area of other sugar mills, were allotted to the mill. It was further stated that the respondent did not work for the whole crushing season in any of the crushing seasons, right from 1988-89 to 1990-91.

4. The question which is required to be decided by this court is as to whether on the basis of material on record the respondent could be treated to be seasonal workman so as to give him a right to work in subsequent crushing seasons. It is admitted by both the parties that Standing Orders covering the conditions of employment of workmen in Vacuum Pan Sugar Factories in U.P. has been framed and appellants' mill is a Vacuum Pan Sugar Factory to which standing orders are applicable. Standing Order defines seasonal workmen as follows.

"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 for his not joining duty, he shall only lose his retaining allowance for the period of his absence."

Temporary workman has been defined as under:

"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."

5. In paragraph 5 of the supplementary counter-affidavit number of days on which the respondent has worked during the three crushing seasons, have been given according to which in the crushing season 1988-89, out of 160 working days the respondent worked for 98 days, in sea-son 1989-90, out of 160 days he worked for 126 days and in the year 1990-91, out of 140 days he worked for 127 days. From perusal of the affidavits filed by the parties it is apparent that the respondent was not appointed on any post, temporary or permanent, and his appointment runs from day to day and is not for any of the crushing seasons. He did not work for the whole of the crushing seasons and during the days on which he worked, he worked on daily wages basis. Such an appointment runs from day to day and is not for any fixed period. His appointment was necessitated due to allotment of extra cane centres to the mills. The nature of work of the respondent was of casual and temporary nature, and as such he can utmost claim status of temporary workman on daily wages basis. Such a workman

cannot be treated to be seasonal workman. Even if the work is of permanent nature the workman will be temporary workman, if engaged to fill in temporary need of extra hand.

6. Learned single Judge allowed the writ petition of respondent on the basis that he has worked during the major parts of the three crushing seasons from 1988-89 to 1990-91 and that the appellants have not produced any material to show that his appointment was made with a view to meet any casual requirement of the mills. It was further held by the learned Judge that as the respondent has worked for major parts of the three crushing seasons, nature of his work cannot be said to be in casual nature. It is not possible to agree with the learned Judge. Before a workman can be declared as seasonal he must be engaged for the crushing seasons. The appointment of the respondent was not for the crushing season but was on daily wages basis without reference to any fixed period. Such an appointment cannot be treated to be appointment for the crushing season. Merely because the nature of work of a daily wager is not of casual nature, he cannot be treated to be seasonal workman. A daily wager cannot be declared to be seasonal workman because he has worked for substantive part in more than one crushing season. Such a workman may at the most be treated as temporary workman, unless his appointment is referable to crushing season and he has worked in that season. Two learned single Judges of this Court in Writ Petition No. 2053 of 1992 *Shashi Bhushan Singh v. State of U.P.* decided on December 2, 1992 and Writ Petition No. 22843 of 1988, *Rajaram Misra v. District Magistrate*, decided on January 18, 1993, have negated the claim of the daily wagers for declaration as seasonal workmen and have accordingly dismissed their writ petitions. We respectfully agree with the views taken in the above decisions in the cases of *Shashi Bhushan Singh* and *Rajaram Misra* (supra)

7. The submission of learned counsel for the respondent, in this connection, is that the artificial breaks were created in the service of the respondent by the appellants, which is nothing but unfair labour practice, on account of which the workmen cannot be denied the benefit of continuity of service. Certain cases, relating to artificial break of service, have also been cited by the learned counsel for the respondent. But this question does not arise in the instant case. No such plea has been taken by the respondent in his writ petition. There is nothing on record to show that his service was terminated to deny him the benefit of continuity of service. He was appointed purely on daily wages basis to meet the temporary need which arose on account of allotment of eight new cane centres to the mills.

8. Normally the controversy of the nature which is involved in the instant case should be decided by the Labour Court/Industrial Tribunal. Writ jurisdiction is not appropriate forum 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 appeal on merits.

9. For the reasons given above this appeal is allowed and the impugned judgment of learned single Judge is set aside. Writ petition, filed by the respondent, is dismissed. In view of facts and circumstances of the case, there shall be no order as to costs.