

(2013) 10 AHC CK 0190

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37904 of 1992

M/s. Triveni Engineering Works Sugar Unit

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 ADJ 478 : (2014) 3 AWC 2479 : (2013) 139 FLR 1012

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : C.P. Ghildyal, for the Appellant; Y.K. Sinha, for the Respondent

Judgement

Tarun Agarwala, J.—Heard the learned counsel for the petitioner. No one appears on behalf of the respondents. The petitioner is a sugar factory engaged in production and sale of sugar through Vacuum Pan process. The service conditions of the workmen and other employees of the sugar unit are covered and governed by the Standing Order known as Standing Orders covering the conditions of Employment of Workmen in Vacuum Pan Sugar Factories in Uttar Pradesh.

2. The respondent workmen, being aggrieved by their non employment for the crushing season 1989-90, raised an industrial dispute before the labour Court, which was referred for adjudication. The workman contended that he has been working in the petitioner's sugar unit since the crushing season 1986-87 and that they had worked in the entire crushing season 1988-89 as a carrier mazdoor. The workmen contended that at the start of the crushing season 1989-90, the workmen presented themselves for being given work, but no work was given to them by the management. The workmen contended that the action of the respondent in not giving them the work was wholly arbitrary and against the Standing Orders of the company, and accordingly, prayed that they should be reinstated in service and that they should be given work with continuity of service.

3. The sugar factory denied the claim of the workmen and contended that the

workmen were never appointed as seasonal workmen and were not entitled to be called for the ensuing season 1989-90. The management contended that the workmen were working as a temporary part time mazdoor for short duration during the crushing season 1988-89 and had worked intermittently. It was also alleged that the workmen had never worked during the whole of the crushing season 1988-89, and therefore, the workmen could not consider them as a seasonal employees.

4. Before the labour Court, the workmen produced photo-stat copy of the payment register depicting that they had worked for the whole of the season. In spite of opportunity being given, the management did not produce the original payment register or the attendance register to indicate that the workmen had worked intermittently or that they did not work for the whole of the crushing season. The labour Court after considering the material evidence on record held that the workmen had worked for the whole of the crushing season 1988-89, and therefore, the management was obliged to call the workmen and offer them work for the ensuing season 1989-90, which has not been done. The labour Court held that the action of the respondent in not offering the workmen was in violation of the Standing Orders, and consequently, gave an award directing the management to reinstate the workmen with continuity of service with full benefits. The petitioner, being aggrieved by the said award, has filed the present writ petition.

5. The Court finds that the interim order was passed staying the effect and operation of the award, and accordingly, the workmen were not reinstated nor given any work. More than 20 years have elapsed and one does not know the status of the workmen, even though, the counter-affidavit has not been filed by the workmen, but now, no one is appearing on their behalf.

6. Having heard the learned counsel for the petitioner, the Court is of the opinion that the finding of the labour Court, namely, that the workmen had worked for the whole of the crushing season 1988-89 is based on cogent evidence, which has not been refuted by the employers. The contention of the petitioner is that the workmen were employed as a casual workman and, even though, they may have worked during the entire crushing season, nonetheless, the management was not obliged to call them or offer them work in the next crushing season 1989-90. In this regard, the petitioner has placed reliance upon the provision of clause L-3 of the Standing Order, which provides that no notice is necessary for termination of the services of a temporary/casual workman at the end of the period for which he was engaged.

7. The submission of the learned counsel for the petitioner appears to be attractive but, the Court finds that, the said contention cannot be accepted for the reason that no evidence was filed by the employers with regard to the status of the workmen as to whether they were employed as a casual mazdoor or as a temporary mazdoor or that they had worked intermittently in the crushing season.

8. On the other hand, there is ample evidence to indicate that the workmen had worked for the entire crushing season 1988-89. The question is, who become a seasonal workman? The Standing Order defines that the seasonal workman is one, who is engaged only for the crushing season. Crushing season has been defined in Clause A-5 of the Standing Order to mean the period commencing from the date when the crushing season commences till the date when the crushing season ends.

9. In the instant case, a finding has been given that the workmen had worked for the entire crushing season, and therefore, they come under the category of the seasonal workman. Clause-K of the Standing Order provides that a seasonal workman, who has worked during the whole of the second half of the last preceding season will be employed by the factory in the current season. Consequently, it was obligatory on the part of the management to employ the workmen and offer them work in the current season of 1989-1990, since the workman had worked for the whole of the preceding season. Since clause-K was not adhered to, the action of the employers in not offering the work in the ensuing season to the workman was wholly arbitrary.

10. In the light of the aforesaid, the award of the labour Court holding that the action of the respondents was arbitrary was perfectly justified. However, the Court is of the opinion that the direction of the labour Court directing reinstatement with continuity of service and granting full benefits was not proper. In the fact and circumstances of the case, since different stand were taken by the parties with regard to the status of the workmen, the Court is of the opinion that only a direction for reinstatement of the workmen alone ought to have been passed for the season 1989-1990. The said season is now over. It is not known as to whether the workmen are alive or not. Consequently, the award of the labour Court is modified to the extent that in the event, the workmen are alive and they report before the management, they would each be paid a sum of Rs. 10,000/- in lieu of wages for the crushing season 1989-90 and cost of litigation. The award stands modified accordingly and the writ petition is partly allowed.