
(2013) 08 AHC CK 0088
In the Allahabad High Court
Case No : Writ C. No. 64215 of 2006

Nathi Ram

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) 4 LLJ 321

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Advocate : Sumati Rahi Gupta, for the Appellant; C.S.C. Diptiman Singh and S.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.—By means of this writ petition the petitioner has challenged the award of the Labour Court dated 25.4.2005 in Adjudication Case No. 32 of 2003 by which the claim of the petitioner has been rejected. The claim of the petitioner is that he was employed in the Sugar Mill of the Triveni Engineering and Industries Limited, Deoband, Saharanpur. His services were terminated with effect from 7.11.2000, inasmuch as, when the crushing season started, he was not called for duty.

2. The petitioner then raised a dispute and a reference was made u/s 4K of the U.P. Industrial Disputes Act, 1947 (in short the Act): whether the termination from service on 7.11.2000, by the Employer, of the Workman Sri Nathi Ram S/o Sri Sukkar Singh, as Seasonal Cane Supervisor was invalid and if yes, then for what relief would he be entitled to?

3. The claim of the petitioner before the Tribunal was that he was engaged in the Establishment as Seasonal Cane Supervisor from 2.1.1983. He claims that right from 1983-1984 till 1999-2000 in every season he worked in the said capacity for full season. But when the crushing season of 2000-2001 started on 7.11.2001 he was not called for work.

4. According to the petitioner, the Clause-T of the Standing Order of 1989 provides that if the workman has worked for full season he is necessarily to be engaged in the next crushing season and, therefore, when the next crushing season started and he was not called, the Employer acted in violation of the said Standing Order. It was also claimed that during his engagement since 1983 his services were unblemished yet the Employer acted illegally in not allowing him to function after 7.11.2001. Therefore, he is entitled to the continuity of service and all other admissible emoluments attached to such service.

5. On the other hand, the Employer denying the claim of the petitioner, submitted that the employees of the mill were governed by the standing order and the appointments are made in accordance with the procedure prescribed by issuing letter of appointment. The attendance of the employees are noted in Form-12 every day.

6. It was claimed that the petitioner never worked in the establishment as a regular employee or even on regular basis and, therefore, the question of his termination from 7.11.2001 does not arise. It further claimed that there is no relationship of the master and the servant between the petitioner and the Employer-respondent and the petitioner is not a workman as defined u/s 2(z) of the U.P. Industrial Disputes Act. It was further contended that the petitioner never worked for 240 days in any calender year as required u/s 2(g) of the Act to claim the benefit of Section 6N or even to claim regularization. Nor can he claim adjustment as seasonal worker as he has not worked for full season in the previous year. It was claimed without admitting that even as per the case of the petitioner himself if he was engaged as Seasonal Sugar Cane Supervisor, although there is no post of Seasonal Cane Supervisor, his nature of work was supervisory and was not that of a manual labour to have fallen under the category of workman. The duty or work entrusted a Cane Supervisor is to survey the cane fields and measure the area of the field of the cane sown and note it in the register on the basis of the varieties of the cane sown in the field and to prepare a report and give it to the Circle In-charge and to educate the villagers regarding various varieties of the cane and encourage them to sow new variety of cane on the maximum part of field so that the probability of cane production is enhanced.

7. According to the Employer, the nature of the work assigned to a Sugar Cane Supervisor is not that of the workman as defined u/s 2(g) of the Industrial Disputes Act, but his main duty was supervisory.

8. Upon the aforesaid pleadings the Labour Court recorded a finding after assessment of the work undertaken by the plaintiff-workman. It held that the petitioner is not a workman, as defined under the said Act and further held that the petitioner has not been able to prove that he worked in any calender year for more than 240 days to be entitled for continuity in service. It further recorded a finding that the petitioner has not been able to establish in any manner that he was in continuous service since 1983 and on this ground also the claim of the

petitioner was rejected vide award dated 25.4.2004.

9. I have heard Ms. Sumati Rani Gupta, learned counsel appearing for the petitioner and Sri S.D. Singh, learned counsel appearing for the Employer-respondent no. 2.

10. Ms. Gupta, learned counsel appearing for the petitioner, while assailing the award has stated that the finding recorded by the Labour Court with regard to the fact that the petitioner is not a workman is perverse as the necessary aspect to be looked into is not the nomenclature of the post but the duty assigned to such a post. She has relied upon a decision of the Hon"ble Supreme Court in the case of S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, Paragraph-5 of the said judgment is quoted here-in below:

In Mcleod and Co. Vs. Sixth Industrial Tribunal, West Bengal and Others, , P.B. MUKHARJI, J. of the Calcutta High Court as the learned Chief Justice then was, observed that whether a person was a workman within the definition of the Industrial Disputes Act would be the very foundation of the jurisdiction of the Industrial Tribunal. The court further observed that in order to determine the categories of service indicated by the use of different words like "supervisory", "managerial" and "administrative", it was not necessary to import the notions of one into the interpretation of the other. The words such as "supervisory", "managerial" and "administrative" are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define where supervision ends and management begins or administration starts. For that would be theoretical and not practical. It has to be broadly interpreted from a common sense point of view where tests will be simple both in theory and in their application. The learned Judge further observed that a super visor need not be a manager or an administrator and a supervisor can be a workman so long as he did not exceed the monetary limitation indicated in the section and a supervisor irrespective of his salary is not a workman who has to discharge function mainly of managerial nature by reasons of the duties attached to his office or of the powers vested in him. The aforesaid decision of the Calcutta High Court was noted with approval by this Court in National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others,

11. Ms. Gupta, learned counsel for the petitioner has then relied upon a decision of the Hon"ble Supreme Court in the case of Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, . The aforesaid judgment has drawn a distinction between two types of supervisory work to hold whether by nomenclature of a Supervisor the workman ceases to be a workman? Relevant portion of paragraph-20 is quoted here-in-below:

The Tribunal was, therefore, correct in holding that a Fuelling Superintendent is not employed mainly or substantially to do supervisory work. On the other hand, his duties are mainly manual. Exception (iv) does not, therefore, apply to a

Fuelling Superintendent and. even though the salary exceeds Rs. 500 per mensem, a Fuelling Superintendent must be held to be a workman.

12. According to Ms. Gupta, learned counsel for the petitioner merely by giving a nomenclature of a Seasonal Cane Supervisor, it would not, ipso facto mean that he is not in the category of workman. What is to be looked into is, what is substantially, the nature of work. The nomenclature "Supervisor" would mean supervisory work but if his duties are mainly of manual in nature, thus he cannot be precluded from the ambit of the definition of workman merely on the basis of nomenclature given to the petitioner.

13. Ms. Gupta, learned counsel further assailed the award of the Labour Court on the ground that once the Labour Court held the petitioner not to be a workman, it ceases to have jurisdiction to record a finding that the petitioner has not worked for 240 days in any calender year and upon these grounds the award cannot be sustained and has to be set-aside and the matter be remanded back for a fresh consideration.

14. Sri S.D. Singh, learned counsel appearing for the respondents, on the other hand, submits that once a reference is made then the Labour Court is obliged to decide the dispute, as has been referred. According to him, the reference was made that, whether the alleged workman was invalidly removed from service on 7.11.2000? He submitted that while considering the claim of the parties, it recorded a finding firstly; that the workman has failed to prove that he was engaged since 1983 and further he has not been able to establish that he worked in any calender year for more than 240 days.

15. Arriving at the aforesaid conclusion the Labour Court has further recorded a finding that the petitioner was not the workman as defined under the Industrial Disputes Act. Even upon the own case set up by the petitioner that he was Cane Supervisor, considering the nature and duties assigned to him was supervisory and not manual. He has drawn my attention to the statement made by the workman where he has admitted that he was never given any letter of appointment nor any salary slip has been given to him. He was neither a clerk nor he was assigned to such a duty. Sri Singh submits that there is no post of Seasonal Cane Supervisor. The duty of a Cane Supervisor is not seasonal. It is permanent. The nature of duty is supervision of the cane field and for encouraging and educating the villagers regarding varieties of cane available for agricultural purposes and encouraging them for higher yield for their own benefit as well as for the Mill. Sri S.D. Singh argued that the petitioner even if intermittently engaged to perform manual work, would not entitle him to claim himself as a Workman as defined under the said Act unless the relationship of master and servant is established and he has actually worked for more than 240 days.

16. I have considered the submissions made by the learned counsel for the petitioner as well as the counsel for the respondents.

17. The undisputed fact is that a reference was made to the Labour Court: whether the termination of the petitioner was invalid? Although, whether he worked continuously or intermittently is in dispute. As per own case of the petitioner, he was a Seasonal Cane Supervisor for whatever period he worked.

18. Upon these facts the Labour Court had to consider the reference made to it whether the petitioner's services were invalidly terminated. For consideration of the aforesaid question the pleadings of the parties as well as the evidence adduced by each of the parties were taken into account and a categorical findings have been recorded disallowing the claim of the workman that he was continuously working in the Establishment since 1983. Upon question being posed to the workman he could not give any satisfactory explanation or produce any material whatsoever with regard to his engagement since 1983.

19. So far as the claim of the petitioner for treating him to be a seasonal worker under the Standing Orders, a finding has been recorded that in the previous season he has not worked for full season nor was he given a certificate of being seasonal, as per requirement of law. To be called seasonal, the workman has to prove that in the previous season he has worked for the whole season. This fact has not been proved by the worker, therefore, his claim was also not allowed by the Tribunal.

20. So far the nature of work done by the petitioner for which he was held not to be a workman apart from the fact that he could not prove that he worked for 240 days, was upon the statement of the worker himself that this nature of work was mere clerical and supervisory and not manual. The workman has not been able to show any material with regard to the fact that he was substantially a manual labour but intermittently assigned supervisory work also to get any benefit of the judgment in *Burmah Shell Oil Storage and Distributing Co. of India Ltd. and others v. The Burmah Shell Management Staff Association and others* (supra).

21. Considering the aforesaid finding recorded by the Tribunal, in my view, the petitioner has not been able to establish either that he had worked for 240 days in any calendar year for grant of continuity in service nor could he prove that the nature of work assigned to him would fall under the category of workman.

22. Upon the aforesaid facts and circumstances, no relief can be granted to the petitioner as no error has been pointed out in the award of the Labour Court. The writ petition lacks merit and it is, accordingly, dismissed.