

(1994) 09 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 2760 of 1987

Sadashiv Shankar Phalke

APPELLANT

Vs

Shriram Sahakari Sakhar Karkhana Ltd. and Another

RESPONDENT

Date of Decision : 13-09-1994

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 40
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33C

Citation : (1997) 3 LLJ 499

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : Dr. R.S. Kulkarni, for the Appellant; S.M. Naik, for the Respondent

Judgement

1. This Writ Petition under Articles 226 and 227 of the Constitution of India impugns an order dated December 22, 1986 made by the Labour Court, Sangli, in Application (IDA) No. 60/84 u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act")

2. The short facts of the case are : The first respondent is a sugar manufacturing industry, which is covered under provisions of the Bombay Industrial Relations Act. It is well-known that sugar industry is a seasonal industry and the crushing season lasts, usually, from October/November till the ensuing April/May, every year. The petitioner was employed as a Chit Boy in the employment of the first respondent since crushing season 1972-73. Under the terms of the Standing Order as applicable to the employees working in the employment of the first respondent, such of the employees who usually work only during the crushing season are termed as seasonal employees. Any employee employed for three consecutive seasons, if he is a seasonal employee, is deemed to be a permanent employee under the applicable Standing Order. The petitioner was continuously working in seven consecutive seasons and had, by operation of the Standing Order, acquired the status of a seasonal permanent employee. The services of

seasonal employee are terminated at the expiry of each crushing season. At the commencement of the next crushing season, the employees are notified by public notices and any permanent employee, who offers himself for employment, is entitled to be paid an allowance, known as retention allowance, which is at the rate of 25% of the wages, which would have been payable during the off-season had he continued to work throughout the season.

3. The crushing season for 1978-79 came to an end some time in April-May, 1979, and the services of all employees, including the petitioner, were terminated on October 26, 1979. The petitioner offered himself for re-employment in the ensuing 1979-80 crushing season, which was to commence from November 1, 1979. He was not taken in employment and some other employees junior to him were taken in employment. The petitioner challenged this action of the first respondent by his Application (LCK) No. 59 of 1979 before the Labour Court at Kolhapur under the provisions of the Bombay Industrial Relations Act. The Labour Court, Kolhapur, by its order dated January 20, 1981, allowed the said application and held that the first respondent's refusal and failure to employ the applicant with effect from November 1, 1979 in the crushing season of 1979-80 as a Chit Boy was illegal and improper. It directed the first respondent to reinstate, with immediate effect, the petitioner as a Chit Boy in the "current season"; it also directed that the petitioner be paid back wages for the entire season of 1979-80 commencing from November 1, 1979 and also that he be paid back wages for the period in the current season" (i.e. 1980-81) till the date of his reinstatement. Unfortunately for the petitioner, though the issue of retention allowance for the period prior to November 1, 1979 was not in issue before the Labour Court, Kolhapur, the Labour Court went into the said issue indirectly, while considering the retention allowance for the period subsequent to November 1, 1979, and observed. As the applicant was not getting any retention allowance for the off-season, I do not think that any order of payment of retention allowance for the off-season can or need be made." These gratuitous observations, as we shall see later, were held against the petitioner.

4. After the petitioner was reinstated and paid his back wages, the petitioner made another application, being IDA No. 60 of 1984, u/s 33-C(2) of the Act, in which he claimed that he was a seasonal permanent employee with effect from the season 1975-76 and that he had not been paid retention allowance which was payable to him in every crushing season subsequent thereto till the season 1982-83, which was the one immediately previous to the date on which the application was filed. He, therefore, claimed an amount of Rs. 7,158 as due to him during the crushing seasons 1975-76 to 1982-83 towards retention allowance as well as bonus at the rate of 20% on the unpaid amount of retention allowance. He also made a claim for encashment of earned leave with wages to the extent of Rs. 3,300. The Labour Court, Sangli, by the impugned order dated December 22, 1986, took the view that, in the absence of a specific award or order making the petitioner a seasonal permanent employee, it could not be said

that he had become a seasonal permanent employee. Inasmuch as there was no specific order directing the petitioner to be treated as seasonal permanent employee, the Labour Court was of the view that he could not claim the retention allowance payable under the conditions of service only to permanent seasonal employees offering themselves for employment at the commencement of every crushing season. Consequently, the Labour Court held that the claim for retention allowance was unsubstantiated. His claim for bonus on the retention allowance was also held to be unsubstantiated. As far as the claim for leave wages was concerned, the Labour Court took the view that such a claim could not be made under the provisions of Section 33-C(2) of the Act and also that the claim was stale and could not be made after such a long period of time. In this view of the matter, the Labour Court rejected the claim of the petitioner in its entirety. Hence, this petition.

5. The facts do not appear to be in dispute. It is not disputed that the petitioner was in the employment of the first respondent from the season 1972-73 till November 1, 1979, when he was removed from service. Though Mr. Naik, learned Advocate appearing for the first respondent, faintly argued that, even as per the Explanation to the Standing Order, the petitioner had not become permanent, because he was only a temporary employee, I am not impressed by this submission. The relevant Standing Order reads as under :

"(2) (a) "Permanent Employee" means an employee who has been appointed as such in writing by the Managing Director and includes an employee who has completed a probationary period of three months and/or whose appointment has been confirmed in writing by the Managing Director. The probationary period may, however, be extended by the Managing Director in writing for reasons to be recorded, by a further period of three months only, before or at the end of which the employee concerned shall be confirmed, reverted, or sent away.

Explanation. - Any employee employed for three consecutive seasons, if he is a seasonal employee and in other cases employed continuously for not less than six months otherwise than as a temporary employee, a casual employee, a substitute or an apprentice shall be deemed to be a permanent employee".

It would at once be seen from this Standing Order that, as far as the seasonal employee is concerned, any employee employed for three consecutive seasons would be deemed to be a permanent employee without any further order. The view of the Labour Court that something further by way of a written order or declaration was necessary to convert such seasonal employee into a permanent employee, even after continuous working during three consecutive seasons, is erroneous and flies in the face of the applicable Standing Order, which is determinative of Industrial Relations, by virtue of Section 40 of the Bombay Industrial Relations Act. I have, therefore, no hesitation in rejecting the contention and holding that, with effect from the crushing season of 1975-76, the petitioner had become a seasonal permanent employee. Since it is not disputed that he had offered himself for work during all the subsequent crushing

seasons, he would be entitled to the retention allowance payable for the crushing seasons 1972-73 to 1978-79. I am also not impressed by the contention of Mr. Naik that the Kolhapur Labour Court's order, by which the retention allowance has been refused, would operate in the nature of *resjudicata* to bar the claim of the petitioner for retention allowance. In the first place, the only claim before the Labour Court, Kolhapur, was a claim for reinstatement with continuity and back wages, which could only mean a claim arising on and from November 1, 1979. The Labour Court was really not concerned with the claim for retention allowance for the period 1975-76 to 1978-79. Any gratuitous observations made by the Labour Court, Kolhapur, in its order in Application (LCK) No. 59 of 1979 would be of no consequence. I am of the view that the claim of the petitioner for payment of retention allowance for the period 1972-73 to 1978-79 could not have been considered as having been adjudicated and rejected. As far as the claim for the seasons 1979-80 and 1980-81 was concerned, it could, perhaps, be treated as a part of the claim for back wages made in Application (LCK) No. 59 of 1979. Though I am of the view that it has been wrongly rejected, the order made by the Labour Court in the said application on that part of the claim must be treated as having been finally adjudicated and binding as it has not been challenged. As far as the claim for the season 1982-83 was concerned, it was never the subject matter of any previous proceedings and, therefore, it was very much open for consideration before the Labour Court, Sangli.

6. The only ground given in the impugned order for rejecting the claim for retention allowance is that there was no declaration or order made that the petitioner had become a seasonal permanent employee. I have already held that, in view of the language used in the Standing Order, the petitioner had become a seasonal permanent employee. There is no other ground on which the claim has been rejected. The impugned order of the Labour Court, Sangli, on the issue of retention allowance is, therefore, erroneous, at least as far as the crushing seasons 1979-80 and 1980-81 are concerned.

7. I am not inclined to disturb the view that has been taken by the Labour Court on the issue of the claim for encashment of leave. In any event, since the petitioner has been reinstated, the first respondent is duty bound to re-calculate the leave account of the petitioner and credit to his leave account all such leave, which he would have been entitled to during the period of his forced unemployment from November 1, 1979 till he was reinstated in service. Hence, there is no need for considering the claim for encashment, as, admittedly, there is no provision for encashment while the employee continues in service.

8. In the result, the impugned order is quashed and set aside only with regard to the claim for retention allowance and bonus thereupon. The first respondent is directed to pay retention allowance and bonus thereupon for the seasons 1975-76 to 1978-79 and 1982-83. The exact calculation would be Rs. 7,158.75 minus Rs. 1,845.00 for the two seasons 1979-80 and 1980-81, which would come to an amount of Rs. 5,313.75, payable to the petitioner. The first

respondent is also directed to appropriately adjust the leave account of the petitioner by taking into account the leave which he must be deemed to have earned during the period of his unemployment from November 1, 1979 to the date on which he was reinstated.

9. Rule is, accordingly, made partly absolute. However, there shall be no order as to costs.

10. Certified copy expedited.