
(1961) 11 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1521 of 1960

Sukhjit Starch and Chemicals Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-11-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : AIR 1962 P&H 553 : (1962) 5 FLR 27 : (1962) 2 LLJ 269

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Judgement

(1) An industrial dispute having arisen between Messrs Sukhjit Starch and Chemicals Limited, Phagwara, on the one hand, and their workmen on the other, the same was referred by the State of Punjab for adjudication to the Industrial Tribunal, Punjab at Patiala sometime in May 1960. Item No. 2 of the said dispute was as follows:

"Whether the Badli workmen should be absorbed in permanent posts? If so, with details?"

Besides this item, there were two more items of dispute which were mentioned at Nos. 1 and 3 of the notification referring the dispute to the Tribunal, but in the present petition we are not concerned with these two matters. By its award dated the 25th July 1960 published in the Punjab Government Gazette dated September 2, 1960 (copy annexure "B" to the petition) the Industrial Tribunal directed the employers to bring 12 Badli workmen on the Roll of permanent hands with attendant privileges at once and named those 12 workmen in the said award. Qua the others a direction was made saying-

"The management should consider for permanency the cases of others as and when they complete two hundred days of continuous work."

Feeling aggrieved against the said award the employers, Messrs Sukhjit Starch and Chemicals Limited, Phagwara, have come up to this Court with the present

petition under Arts. 226 and 227 of the Constitution of India and seek to have the award on issue No. 2 quashed. It may be mentioned here that issue No. 2 related to item No. 2 of the dispute. The petitioners allege that the Industrial Tribunal had no jurisdiction to require them to add to their labour force and to compel them to bring 12 of the Badli workers on the Roll of permanent hands with attendant privileges at once and to direct that the management should consider for permanency the cases of others as and when they complete 200 days of continuous work.

Their case is that they have got a labour force of about 245 people in all, out of which 165 are serving in three shifts A, B and C, A having 55 permanent workmen, B having 56 workmen and C having 54 workmen. The rest of the employees are engaged in office work and other miscellaneous duties.

Apart from these 245 people, they have got another roll of 51 people whom they keep as Badli workmen. These people, though not obliged to report themselves at the gate of the mill every morning, do for their own sake sometimes come with a view to find if any of them can be employed by the management in any vacancy of a permanent or a probationer workmen on any particular day. Out of these Badli workers the management employs as many workers as they have vacancies on that particular day and the rest of the Badli workers return home without getting any work for the day in that mill.

I am told that this system has been put in vogue both in the interest of the management as also those of the workmen. The advantage gained by the management is that they have tried and experienced workers always available to them and are in a position to employment. The advantage to the workers is that the management does not employ any other labour on casual vacancies and whenever an occasion arises they have to employ only out of the Badli workers on their Rolls.

The case of the management is that they are not obliged to keep these Badli workers on their permanent Roll and the Industrial Tribunal had no jurisdiction at all to compel them to do so and thereby to add unnecessarily to their labour force.

(2) The petition is contested on behalf of the workmen whose case is that they have worked for a number of days and have yet not been brought on the permanent Rolls. It is pleaded on their behalf that the Tribunal was perfectly justified in directing the management to bring 12 Badli Workers mentioned in the award on the permanent Roll of the management and to consider the cases of others for being brought on such a roll if and when they complete 200 days of work as Badli workmen.

(3) After hearing the learned counsel for the parties at great length I have come to the conclusion that this petition must be allowed and the award of the Tribunal relating to issue No. 2 must be quashed.

(4) Under the standing orders framed by the management under the Industrial Employment (Standing Orders) Act (20 of 1946) which were duly certified by the Certifying Officer on the 22nd of July 1959, a Badli workman is defined as under:

"A "badli" is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent."

The definitions of a permanent workman and a probationer workman are also given in the said standing orders. It is not denied on behalf of the workmen that the management has got a separate roll for Badli workers and that and that there are 51 persons on the said Roll. It is also not denied that such of these 51 workers who need work on any day do call at the gate of the mill every morning and such number out of them as are actually needed by the management to fill up vacancies of permanent or probationer workers, who are absent on a particular day either on account of illness or for any other cause, are employed by the mill for that particular day. It appears that some of them are employed for several days but this fact alone is not sufficient to hold that they have become permanent hands or that the management has in any way hound itself to absorb them in permanent posts. In *Nellimarla and Chittavalsa Jute Mills V. Their Workmen* 1953 II L LJ 512 (LATI-Cal), the Labour Appellate Tribunal of India had an occasion to consider whether a company by the mere fact of having a register of a large number of Badli workers and employing those Badli workers from time to time had an obligation to pay regularly week after week unemployed Badli workers who were not at the time their workmen and at p. 514 it was observed as under:

"The companies voluntarily maintain register of Badlis. We are told there are 800 persons in the Badli register of Chittavalsa Mills and about 650 in the Badli register of Nellimarla Jute Mills. These number include all categories of workmen. The Badlis are taken from these registers whenever there is work for them due to absence of permanent Workmen or for other reasons. We are told that on the average about 300 Badlis are taken daily in each of these mills. The practice is that the Badlis whose names appear in the registers are taken in by rotation. The Badlis present themselves at the labor office just before work begins and as many as are required are taken in and given employment and the rest go away. They are paid only for the day or days when they actually work. If any Badli whose turn comes is not present to offer himself for work, he loses his chance and the next man on the Badli register is taken in for Badli work. The Badlis are not, however required by the management to be present at the labour office. But by reason of the aforesaid practice, that is to say, in order that he may not lose the chance by his absence on a particular day, he presents himself at the labour office for his own interest before the work starts. In the light of these admitted facts we will have to determine the question of allowance to those who do not get the chance to be taken in for work. As the management does not require their presence but they present themselves in their own interest, we do not see how a right exists in them or can be conferred on them to get an allowance

during the period of their non-employment. They are not workmen of the companies save and except when they are actually taken in for work. The companies no doubt maintain a register for Badlis, as we have said before and whenever there is occasion to engage temporary hands, they choose those whose names appear on the Badli register and for the purpose of giving every one a fair chance, they follow the practice of employment by rotation. This the companies have done voluntarily. It is no doubt to the interest of the companies also to take badlis whose names are registered because they get the advantage of getting the work on a temporary basis from men who gave from past employment experience of the work. It is also to be advantage of the Badlis to this extent that by this practice the choice of the companies for temporary work is limited to those persons whose name appear in the Badli register. But we do not see any good reason for imposing an obligation on the companies to pay regularly week after week unemployed Badlis who are not at the time their workmen on the simple ground that the company have chosen to maintain a Badli register. There is in our opinion, no analogy between the case before us and the case of seasonal workmen, who are paid retaining allowance in the sugar industries during the off-season."

In another case *Muir Mills Co. Ltd., Kanpur v. Ram Lal* 1957 L AC 271 (LAT I-Luck), the Labour Appellate Tribunal had an occasion to consider whether Badli workers had any right whatsoever to claim that they should be made permanent or that they were senior in any way to other workers in their concern. They came to the same conclusion as in the aforesaid case of 1953 II LLJ 512 (LATI Cal), and found that the Badli workers could not make any such claim and could not be deemed to be workmen except on the days when they were actually employed as such. u/s 25C of the Industrial Disputes Act provision is made with regard to right of workmen laid-off for compensation, but Badli workmen or casual workmen have not been allowed any such compensation Explanation to the said section defines "Badli workman" as under:

"Explanation-"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment."

In Section 25B definition of one year of continuous service is given, and it is said there-

"For the purposes of Secs. 25C and 25F, a workman who, during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry."

Mr. Anand Swaroop appearing for the workers relies on these two provisions to show that the badli workers in the present case are entitled to compensation u/s

25C and must, therefore, be deemed to be entitled to be brought on the permanent rolls. There are obvious fallacies in this argument. Firstly, the present is not a case for awarding compensation under S. 25C and no advantage can be taken by the workmen either of the provisions of Sec 25-C or of Section 25B of the Industrial Disputes Act. Secondly, none of the workers in the present case has actually worked in the industry for 240 days during a period of twelve calendar months. The Tribunal has mentioned in his award the number of days for which each of these workmen has worked, but those days are not for twelve calendar months only. Each of these 12 workers, with regard to whom a direction to the management has been given for bringing them on the Roll of permanent hands, has worked for 240 days or more but in a period of 15 to 18 months in different cases. Obviously the Badli workers in the present case, according to the definition of "badli" given in the standing orders, can be deemed to be workmen or probationer who is temporarily absent. The Industrial Tribunal had in my opinion no jurisdiction to direct that the petitioners should add to their labour force and to bring 12 Badli workers named in the award on their permanent roll or to consider the cases of others for being brought on permanent Roll as and when they complete 200 days of continuous work. At any rate, there is an obvious error of law which is patent on the face of the award, and the award must for that reason be quashed.

(5) In the result, I accept this petition and quash that portion of the award which deals with issue No. 2 and which directs the petitioners to bring 12 Badli workers on the Roll of permanent hands with attendant privileges and to consider for permanency the cases of others as and when they complete 200 days of continuous work. In the circumstances of the case, however, I leave the parties to bear their own costs.

(6) Petition allowed