

(2004) 08 AHC CK 0074
In the Allahabad High Court
Case No : C.M.W.P. No. 3844 of 1985

U.P. State Sugar Corporation Ltd.

APPELLANT

Vs

Labour Court , U.P. and Another

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 5 AWC 4860

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Dilip Gupta, R.K. Shukla and R.D. Khare, for the Appellant; Shyam Narain, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The Petitioner employer, aggrieved by an award of the labour Court dated 24th September, 1984 in Adjudication Case No. 1 of 1975, has approached this Court by means of this writ petition under Article 226 of the Constitution of India.

2. The following dispute was referred to the labour Court for adjudication:

Kya sewayojakon dwara apne karmchari Shri. Mujib Ahmad (putra Shri Khan Mohammad) ko season 1973-74 ke arambh hone ki tithi 7.12.1973 ko karya par na liya jana uchit tatha/athawa vaidhanik hai? Yadi nahin to sambandhit karmchari kya labh/kshatipurti pane ka adhikari hai tatha anya kis vivran sahit?

3. The labour Court on receipt of the aforesaid reference, issued notices to the workman concerned as well as the employer. The parties exchanged pleadings and adduced evidence. In short the workman has set up his case that he has been employed by the employer in crushing season 1971-72 and has worked the whole season of 1971-72 as sheet-writing clerk which is the job of seasonal nature. The crushing of the season 1972-73 started on 28.11.1972 and ended on 15.3.1973, the workman worked in this 1972-73 season also. His work and

conduct was unblemished and No. complaint whatsoever was either raised or communicated to the workman concerned. The workman has further set up the case that when the bonus to all other employees was paid for the season 1971-72 he was also paid the bonus but he was not paid retaining allowance. The workman has further cited the case of other employees who were appointed with the workman concerned, they were still allowed to work. The cause of action for raising dispute has arisen when all other employees similarly situated were allowed to join 1972-73 season but the workman concerned was denied. The aforesaid deprivation of employment by the employer to the workman concerned is contrary to law and the workman concerned is entitled to all rights and consequential benefits of a seasonal employee.

4. On the contrary the employers have set up the case that the workman was appointed purely on temporary basis under the standing orders on 12.12.1972. Initially his appointment was for a period of two months and all the terms and conditions were mentioned in the letter of appointment. Since the employment of the workman was of temporary nature his services were terminated in terms of the letter of appointment. He, therefore, as stated by the employer, has No. right for reinstatement and any other right. It is also stated by the employer that for the year 1972-73 the workman has not worked for whole of the season. The employers have further stated that for the crushing season 1972-73 which started on 27.11.1972, the workman concerned worked with effect from 13.12.1972 to 7.3.1973 but he was paid the wages for the whole season beyond which the workman is not entitled for anything. In their rejoinder the employers have stated that the workman concerned was not posted on one purchasing center. His appointment was purely temporary for a temporary job and the employers have never terminated the services of the workman concerned but his services came to an automatic end with the end of the job.

5. The labour Court considered the pleadings of the parties and evidence on the record. The labour Court rejected the cases set up by the employer-Petitioner and have found that neither the nature of work for which the workman was appointed was temporary or contingency nor it has been shown that the appointment of the workman was done because of the excess load of work for a temporary period. Therefore the labour Court has arrived at a conclusion, on the basis of the admitted fact, that while terminating the services of the workman concerned, provisions of retrenchment have not been complied with and held that cessation of work of the workman concerned by the employer amounts to retrenchment.

6. The labour Court has also recorded a finding that the contention of the employer that on commencement of crushing season 1973-74 the workman has not presented himself for job and it is incorrect to say that he was denied of the job. In the pleadings this statement has since not been controverted, the labour Court, in my opinion, arrived at a conclusion against it on the basis of findings recorded by the labour Court, which, in my opinion, cannot be interfered by this

Court in exercise of power under Article 226 of the Constitution of India as this Court will not sit in appeal over the findings arrived at by the labour Court. This writ petition has No. force. It deserves to be dismissed and is accordingly dismissed.

7. Lastly, it is submitted by learned Counsel for the employer that admittedly the workman has not worked for all these days during the pendency of this writ petition since after the alleged termination of service, therefore, on the principle of "No. work No. pay" the order of the labour Court deserves to be modified as laid down by the Apex Court in the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, .

8. In this view of the matter the award is modified to the extent that subject to Petitioner's permitting the workman concerned to join his duties with effect from the coming crushing season, the workman shall be entitled for half of the emolument from the date of termination till the date of reinstatement in the coming season.

9. There shall be No. orders as to costs.