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(2020) 02 UK CK 0005

In the Uttarakhand High Court

Case No : Special Appeal No. 41 Of 2020

Uttarakhand Cooperative Sugar Factories Federation Limited & Another — APPELLANT

Vs

Suman & Others — RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Citation : (2020) 02 UK CK 0005

Hon'ble Judges : Sudhanshu Dhulia, J;N.S.Dhanik, J

Bench : Division Bench

Advocate : T.A. Khan, Ravi Kandpal, Shobhit Saharia, B.S. Parihar

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. The present special appeal arises out of an interim order dated 18.12.2019 passed by a learned Single Judge of this Court in Writ Petition (S/S)

No.2801 of 2019.

2. It appears that the Government of Uttarakhand had passed a Government Order dated 27.04.2018, by which appointments on daily wage basis are

not to be made any further in Government Departments and Government Corporations, etc., and in case there is a requirement by the Government

Departments and Government Corporations then services of daily rated employees can only be taken through an outsourcing agency.

3. Pursuant to the Government Order dated 27.04.2018, the services of certain employees of the Sugar Factory i.e. petitioners in Writ Petition (S/S)

No. 2801 of 2019 were discontinued and was to be taken through an outsourcing agency. This order was challenged by the petitioners before a learned Single Judge of this Court where the following order was passed:-

â??Mr. Shobhit Saharia, Advocate for the petitioners.

Mr. S.K. Mishra, Standing Counsel Ms. Seema Sah, Brief Holder for the State.

Mr. Aditya Kumar Arya, Advocate for respondent nos. 2 and 3.

Heard.

By means of present writ petition, petitioners have sought quashing of orders dated 27.04.2018 and 05.08.2019 issued by respondent no. 1 and 2,

respectively, whereby the petitioners have been stopped from working as daily wager with respondent no. 3.

Counter affidavit to be filed within four weeks.

List thereafter along with WPSS No. 2616 of 2019.

Till the next date of listing, it is directed that the respondents shall not change the service condition of the petitioners and shall permit them to continue

in service.

Stay application CLMA No.16826 of 2019 is disposed of.â??

4. The order of the learned Single Judge has been challenged by the appellants before this Court on the ground that in another Special Appeal being

SPA No.949 of 2019 certain directions have been given by the Division Bench of this Court on 11.12.2019 which are contained in paragraph nos. 4 to

8, which are as follows:-

â??4. In terms of Clause 12(4), the services of workmen, employed through an outsource agency, were required to be engaged on a rotation basis on

renewal of their agreement. This limb of Clause 12(4) was deleted by the proceedings dated 14.06.2018. The appellant-Sugar Mill issued directions, in

terms of the orders impugned in the writ petitions, that the Government order dated 27.04.2018 should be adhered to. While the Government Order

dated 27.04.2018 has not been subjected to challenge in the Writ Petitions, the consequential orders issued by the Sugar Mill have been put in issue.

The present appeals are preferred by the Sugar Mill on the learned Single Judge passing an interim order, in both the writ petitions, directing that the

operation of the impugned orders dated 05.08.2019 and 24.08.2019 shall remain stayed.

5. The basis for passing the interim order, as is evident from the order itself, is that the respondents-writ petitioners were appointed prior to issuance of

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the Government Order dated 27.04.2018; and the Sugar Mill could not, therefore, change the service conditions of the writ petitioners. It is not in

dispute that the respondents-writ petitioners were engaged on daily wages / contract basis on the payment of the minimum scale of pay; their terms &

conditions of service, unlike regular employees, is governed by the contract (in the case of contractual employees). Daily wages employees are

engaged on a day to day basis, and have no right to claim that they should be continued in service in perpetuity. The writ petitionersâ?? claim, of their

terms and conditions of service being varied, may not be justified, more so in the light of the policy decision taken by the State Government and its

order dated 27.04.2018 to disengage the services of employees hitherto employed on contract/daily wages, and to engage such workmen only through

an outsourcing agency.

6. The submission of Mr. S.K. Mandal, learned counsel for the respondents-writ petitioners, is that the said Government Order cannot be given

retrospective effect. The said Government Order prohibits appointment to be made, without the permission of the Government, even against

sanctioned posts, on contract/daily wages/fixed salary/work charged/part time/ ad-hoc basis. From the date on which the said Government Order came

into force on 27.04.2018, statutory bodies or organizations, to which the Government Order was directed to, were disabled from making any such

appointment.

7. Mr. S.K. Mandal, learned counsel for the respondent-writ petitioners, would draw our attention to one such order whereby the employee concerned

was engaged on a contract basis for a period of one year from 01.01.2019 till 31.12.2019. While it does appear that, even after the Government Order

dated 27.04.2018, the Appellant-Mill has continued to engage the services of employees, contrary to the said Government Order, the respondents-writ

petitioners can claim the right to be continued in service only in terms of the contract or the written terms and conditions of the engagement, and not

beyond. While it does appear that, in so far as one of the respondent-writ petitioners is concerned, his contract would conclude by the end of the year

2019, it is not clear whether any similar contract was entered into with the other writ-petitioners in both the writ petitions.

8. Suffice it, therefore, to observe that, in case the appellant has engaged the

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services of any employee, even it is contrary to the Government Order

dated 27.04.2018, then the services of such an employee shall be continued for the duration of the agreement period in terms of the contract already

entered into with them, or till the end of the period specified in the letter of engagement. The appellant shall not, thereafter, engage the services of any

contract/daily wage employee contrary to the conditions stipulated in the Government Order dated 27.04.2018. The respondents-writ petitioners shall

be informed, by the appellant, regarding the period for which their engagement would continue, and the reasons therefor. The exercise of dispensing

with the services of such employees shall be undertaken only after such an order is passed, and is communicated to the respondents-writ petitioners.

The salary and emoluments along with arrears, if any, due to the writ-petitioners shall be paid to them before their services are disengaged. They shall

also be paid salary/wages and other emoluments, to which they are entitled to, for the period of engagement, in terms of the contract or the letter of

engagement, whichever is applicable.â??

5. Learned Senior Counsel for the appellants submits that no opportunity was given to the appellant who was a respondent in the writ petition to

furnish the copy of the order dated 11.12.2019 passed by the Division Bench of this Court in Special Appeal No.949 of 2019 and other connected

matters.

6. We are of a considered view that the order of the Division Bench must be placed before the learned Single Judge, for a better appraisal of the

case. In all fairness, the present appellants should have first gone to the learned Single Judge for review/recall of the order before filing a special

appeal against an interim order.

7. The special appeal is hence disposed of with a direction that the appellants shall furnish the copy of the order dated 11.12.2019 before the learned

Single Judge along with the counter affidavit.

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