
(2017) 02 UK CK 0003

In the Uttarakhand High Court

Case No : Special Appeal No. 631 of 2015

Uttarakhand Cooperative Sugar Mills Federation Ltd.

APPELLANT

Vs

Niyamul Khan

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 19, Section 3

Citation : (2017) 153 FLR 385

Hon'ble Judges : K.M. Joseph, CJ. and V.K. Bist, J.

Bench : Division Bench

Advocate : Mr. T.A. Khan, Senior Advocate, assisted by Mr. Abdul Hameed, Advocate, holding brief of Mr. Aditya Kumar Arya, Advocate, for the Appellant; Mr. C.K. Sharma, Advocate, for the Private Respondents/writ Petitioners; Mr. H.M. Bhatia, Brief Holder, for the State of Uttarakhand

Final Decision : Disposed Off

Judgement

K.M. Joseph, C.J. (Oral)—Since in these appeals common questions of law arise, we are disposing of the same by the following common judgment.

2. The respondents/writ petitioners approached the learned Single Judge seeking a mandamus to direct the appellants to make payment of revised pay scale and also seeking interim relief based on Government Order dated 04.01.2006. It was their case that they were covered by the said Government Order, as they were working under the vacuum pan sugar mills and their service conditions were governed under the Sugar Wage Board. The learned Single Judge allowed the writ petitions and directed to make the payment of the revised pay scale in terms of the Government Order dated 04.01.2006. Hence, these appeals.

3. We heard Mr. T.A. Khan, learned Senior Counsel assisted by Mr. Abdul Hameed, learned counsel for the appellants; Mr. C.K. Sharma, learned counsel for the writ petitioners; and also Mr. H.M. Bhatia, learned Brief Holder for the State of Uttarakhand.

4. The reasoning of the learned Single Judge :

In allowing the writ petitions, the learned Single Judge has found that the writ petitioners were working on daily wage basis admittedly and they were getting minimum of pay scale. He referred to the definition of the "Workers" in the Factories Act and also the definition of "Workman" in the U.P. Industrial Disputes Act. He noticed the argument that, in both the definitions, there is no distinction between a permanent, casual, contractual or daily rated worker. The order, which is sought to be enforced, namely, order dated 04.01.2006, was purported to be issued under Section 3 of the U.P. Industrial Disputes Act, 1947. The learned Single Judge further took the view that the language of the provision shows that the orders were issued for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment and, thereafter, the learned Single Judge proceeded to allow the writ petitions.

5. Submissions of the appellants :

Mr. T.A. Khan, learned Senior Counsel appearing for the appellants primarily contended that the learned Single Judge erred in not noticing that under the very order, which was sought to be enforced by the writ petitioners, persons, who were not getting the pay scale as per the Third Wage Board decision, would not be entitled to the benefit of the Government Order. The writ petitioners were, admittedly, even according to the learned Single Judge, daily wagers. As far as daily wagers are concerned, it is pointed out that they were being considered and payments were made under the following clause of the decision of the Third Wage Board:

"3 (c) A workman employed by sugar factory on contract basis or daily wages or on temporary or casual basis to perform the duties of a workman shall be paid at the rate per day calculated by dividing the minimum monthly total wage (Minimum Basic Wage + Fixed Allowance, if any Variable Dearness Allowance) 26, recommended by the Board;"

It is, therefore, pointed out that the writ petitioners were not drawing any pay scale. Without drawing any pay scale, he poses a question how they could square with the requirement in the Government Order dated 04.01.2006, which expressly excludes the applicability of the said Government Order to the cases of persons who were not getting the pay scale in terms of the Third Wage Board. Relevant portion of the order reads as follows:

"2. But

N & ftu deZdkjksa ij r`rh; osru e.My ds vuqlkj osrueku ykxw ugha Fks ij ykxw ugha gksaxsA

Therefore, his argument appears to be that the Government Order dated 04.01.2006, relied on by the writ petitioners, is not applicable to those workers, who were not getting pay scale in terms of the Third Wage Board. As already

noticed, the argument is that as per the decision of the Third Wage Board, persons earning daily wages were not getting the pay scale; but, were getting their wages in terms of the formula provided therein."

6. Per Contra, Mr. C.K. Sharma, learned counsel for the writ petitioners would join issue with Mr. T.A. Khan, learned Senior Counsel for the appellants and contend, in the first place, that the translation of the word [^]osrueku* is not to be understood as contended by the appellants. The word [^]osrueku* , in clause [^]N* , which we have extracted, according to the learned Senior Counsel for the appellants, means "pay scale". Contesting this interpretation, Mr. C.K. Sharma, learned counsel for the writ petitioners would contend that, in Labour Jurisprudence, there is no word as "pay scale" and the word [^]osrueku* means only "wages". He would further point out that, in the order of the Third Wage Board, which was issued under Section 3 of the Uttar Pradesh Industrial Disputes Act, 1947 with reference to Section 19 of the Act, it has been expressly stated in the order that the order will not apply to certain categories. The said portion of the order reads as follows:

"but this order shall not apply to the following:

- (a) Khandsari and gur refineries and allied industries, such as manufacturer of portable spirit, power alcohol and confectionery and sugarcane farms;
- (b) contract labour employed outside the factory premises and in harvesting and or transporting of sugarcane;
- (c) "apprentices" governed by the Apprentices Act, 1961 (Act No. 52 of 1961);
- (d) factory Labour Welfare Officer whose grades of pay, other allowances and conditions of service shall continue to be governed by U.P. Factories Welfare Officers Rules, 1955, but no Welfare Officer shall get wages below supervisory-B grade, under this order."

He would submit that, conspicuous by its absence in the said provision is any reference to the daily wage earner. Therefore, having regard to definition of the word "workman", it would take in also a daily wage earner and, since the decision of the Third Wage Board does not exclude a daily wage earner, the Court may not deny relief to the petitioners, who are daily wage earners; but, encompassed with the definition of word "workman". We may also notice, in this context, the opening words of the order, which reads as follows:

"1. This order shall apply to-

- (i) all the Vacuum Pan Sugar Factories in this State:
- (ii) all employees in the Vacuum Pan Sugar Industry falling within the definition of the term "workman" in the Industrial Disputes Act, 1947 as amended up to date:
- (iii) all workmen engaged by a contractor of a factory for work connected with :

(a) manufacturing process as defined in Section 2(k) of the Factories Act, 1948;

Or

(b) cleaning any part of the machinery or premises used for manufacturing process;

Or

(c) any other kind of work incidental or connected with the manufacturing process or subject of manufacturing process including handling, loading or unloading of raw materials, stores and finished products within the premises of the factory;

Or

(d) repair and maintenance of machinery, buildings or any other capital assets of the Sugar Factory;

(iv) all medical, para-medical and educational staff;

(v) all persons employed for work in residential colony attached to the factories shall also be deemed to be included within the definition of "Workman" for the purposes of this order."

We indeed do notice sub-clauses (ii) & (iii). Mr. C.K. Sharma, learned counsel for the writ petitioners does not dispute that the writ petitioners were not getting any pay scale as such. Clause 2 of the Third Wage Board provides for wage structure and it reads as follows:

"2. All Vacuum Pan Sugar Factories in the State shall give to their workmen pay in the following scales:

Category of workmen

Revised Scale

A- OPERATIVES

Rs.

1

Unskilled

.....

800-10-900-15-1050

2

Semi-skilled

.....

900-15-1050-20-1250

3

Skilled "B"

.....

1050-25-1300-30-1600

4

Skilled "A"

.....

1200-30-1500-35-1850

5

Higher skilled

.....

1300-35-1650-40-2050

B-CLERKS

6

Grade IV

.....

1050-25-1300-30-1600

7

Grade III

.....

1200-30-1500-35-1850

8

Grade II

.....

1300-35-1650-40-2050

9

Grade I

.....

1400-40-1800-45-2250

C- SUPERVISORY

10

Grade-C

.....

1400-40-1800-45-2250

11

Grade-B

.....

1500-45-1950-50-2450

12

Grade-A

.....

1700-60-2300-75-3050

It is thereafter that clause 3(c), which we have already extracted, also finds place and we may refer to the said clause as a whole:

"3. The aforesaid grades applicable to respective categories of workmen shall be made admissible according to the scheme of fitment given in para 5 :

Provided that-

(a) Workmen if and when transferred from sugar factory to any other allied industry including sugar cane farms shall receive the same wages as obtaining in the sugar factory or in farms or that allied industry whichever is higher;

(b) Workmen employed to work partly in any allied industry including sugarcane farms owned by the sugar factory and partly in the sugar factory shall also receive the same wages as they were getting in the allied industry or in the sugar factory whichever is higher;

(c) A workman employed by sugar factory on contract basis or daily wages or on temporary or casual basis to perform the duties of a workman shall be paid at the rate per day calculated by dividing the minimum monthly total wage (Minimum Basic Wage + Fixed Allowance, if any Variable Dearness Allowance) 26, recommended by the Board;

(d) The Medical Officer shall be allowed either to opt for the revised wage scale as recommended by the Board or his exiting wage scale.

The pay of other medical staff such as compounders, nurse, dresser and mid-wife shall be fixed in the revised scale as per their category mentioned in the

standard occupational nomenclature. These employees getting other amenities such as free uniform, free residential accommodation and electricity or other allowance such as uniform allowance, he/she shall continue to receive the same."

7. Coming back to the Government Order dated 04.01.2006, it speaks about the decision revising the pay scale.

8. Mr. H.M. Bhatia, learned Brief Holder appearing for the State would take a slight different stand from his counterpart before the learned Single Judge (we notice that the learned Government Advocate before the learned Single Judge supported the writ petition) and would contend that if the matter is decided as per law and in terms of the order dated 04.01.2006 and the notification, which was issued in 2012, and as the writ petitioners are demanding a pay scale, the writ petitioners may not be entitled in terms of the Government Order for revision of the pay scale.

9. It is true that the definition of the word "Workman" is wide, both under the U.P. Industrial Disputes Act and under the Factories Act. It may encompass within its scope a regular, casual or even a daily wage earner. But, the writ petitions were filed for enforcing Government Order dated 04.01.2006. This order was issued under Section 3 of the U.P. Industrial Disputes Act. Section 3, material part, reads as follows:

"3. Power to prevent strikes, lock-outs, etc.- If, in the opinion of the [State Government] it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision,-

(a) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

(c)

(d)

(e)

(f)

(g)

Provided that no order made under clause (b)-

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;"

10. The order is purported to be issued under Section 3(b). We do agree with the learned Single Judge that it is indeed open to the Government to make provision for the purpose mentioned in Section 3(b) and to issue orders from time to time. But, the question to be decided by us is, whether the writ petitioners are entitled to the benefit of the said Government Order. In this regard, we may not have to be detained by the definition of the word "Workman", be it under the Factories Act or under the Industrial Disputes Act, except to the extent that they are germane for applying the Government Order to a fact situation. But for the fact that the Government Order contains the exclusionary clause, which we have already extracted and which is the bone of contention between the parties, we would have possibly sustained the judgment of the learned Single Judge; but, we have to necessarily understand and give effect to every part of the Government Order, which is material. In this regard, quite clearly, Government Order dated 04.01.2006 proscribes the availing of benefits by those, who are not in receipt of scale of pay in terms of the Third Wage Board decision. Though, it was sought to be contended that the word ^osrueku* means clearly wages, we would think that the understanding of the meaning of the word ^osrueku* must be confined to the case of the pay scale. It is no doubt true that Mr. C.K. Sharma, learned counsel made an attempt to draw a distinction between wage scale and pay scale. For the purpose of these cases, it is no doubt true that in the order of the Government, under the Third Wage Board, as we have noticed, heading is "wage scale". There may be a distinction between wage scale and pay scale, which may not be relevant for the purpose of deciding the dispute in these cases. A pay scale is ordinarily one, where starting with the minimum, the employee concerned over a period of time, subject to other conditions attached including efficiency bar and consideration of proficiency at work, progresses to the maximum of the scale. This progress is achieved through the mechanism of increments. The increments are indicated in a pay scale. Ordinarily the increments are annual increments. We notice that, what is provided under clause 2 is that, for all purposes, it must be treated as a pay scale. Therefore, what is provided in the Third Wage Board order was a pay scale based on increments. Persons, like the writ petitioners, who were admittedly daily wage earners, were instead governed by clause 3(c), which came under the umbrella of a proviso. In regard to such persons, there was a definite formula, as indicated therein, which we have already adverted to. There is no dispute that the writ petitioners were not drawing any increments. They were being paid wages in terms of the formula for the number of days they worked. True it may be that the wages included certain elements like Dearness Allowance, Medical Allowance etc. after certain deductions; but, that would not make them recipients of pay under a pay scale or wage under a wage scale.

11. We would think that the Government Order dated 04.01.2006, which is sought to be enforced by the writ petitioners, is not available for daily wage earners, like the writ petitioners. This is for the simple reason that it was made very clear in the Government Order dated 01.04.2006 itself, under clause N, that

it will not be available to those unless they are drawing pay scale or a scale of pay under the Third Wage Board decision. We do not think that the writ petitioners can claim to have been paid pay scale as long as they were daily wage earners. This aspect of the matter has not been considered by the learned Single Judge. The aspect relating to the wide definition of the word "Workman" may not control the decision, which we have to make in the context of the facts.

12. It is next contended by Mr. C.K. Sharma, learned counsel for the writ petitioners that, in another company in Kichha, amount is being paid. This is contested by the learned Senior Counsel for the appellants. This would have been on the basis of the compromise and this cannot entitle the writ petitioners in point of law to claim the benefit as a right and their destiny must be determined with reference to the terms of the Government Order and they must succeed or fail based on their right, which flows to them or the non existence of any right under the Government Order.

13. We see merit in the contention of the learned Senior Counsel for the appellants in this regard. Since, we have to decide the issue on the basis of the availability of the right under the Government Order dated 04.01.2006 and as we have to come to the conclusion that the writ petitioners have not made out a case for getting the benefit of revised pay scale under the said order, writ petitioners may not be justified in relying on payment made to others.

14. We may also notice that, in the relief portion, what the writ petitioners have sought is the revision of the pay scale. This also re-enforces us in our conclusion that what the writ petitioners also understood is a pay scale and the same cannot be claimed by them, as they were never in receipt of a pay scale, as they were daily wage earners admittedly.

15. According to Mr. T.A. Khan, learned Senior Counsel for the appellants, the interim relief claimed by the writ petitioners, is a claim which has been rejected earlier, as they were not found entitled being the daily wagers. It is pointed out that, in fact, there has been no challenge to the same. It is also pointed out by the learned Senior Counsel that there is no provision for giving benefit of interim relief in the Government Order dated 04.01.2006. Of course, Mr. C.K. Sharma, learned counsel for the writ petitioners submits that this is being paid to others. We notice paragraph 18 of the writ petition, which reads as follows:

"18. That in view of the above facts and circumstances of the case this expedient and necessary in the interest of justice that this Hon"ble Court may graciously be pleased to issue a writ order or direction in the nature of mandamus commanding and directing the respondents to make the payment of revised pay scale and the interim relief in view of the Government Order dated 04.01.2006, otherwise petitioners shall suffer irreparable loss and injury."

16. Therefore, it appears that the claim of the writ petitioners for interim relief is also based on the order dated 04.01.2006. We have already noticed that the writ petitioners are not entitled to the benefit of order dated 04.01.2006. If that is so,

be it a revised pay scale or interim relief, as claimed in paragraph 18 along with the relief, clearly writ petitioners are not entitled to the same as daily wage earners.

17. There is another aspect of the matter. It appears that many of the employees, including the writ petitioners, have been regularized during the pendency of the proceedings. In regard to the effect of regularization and their rights as regularized employees, we leave the question open and we leave it open to the writ petitioners to seek relief before the appellants and if they are aggrieved by any decision, it will be open to them to seek remedy in any competent forum.

18. The Appeals are disposed of and the Writ Petitions stand dismissed subject to the observations we have made above.

19. There will be no order as to cost.