GANGA KISAN SAHKARI CHINI MILLS LTD. A

v.

JAIVIR SINGH

SEPTEMBER 24, 2007

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[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Labour Laws:

Industrial Disputes Act, 1947—U.P. Payment of Retaining Allowances to Unskilled Seasonal Workmen of Sugar Factories Order, 1972—rr.4 and 6—Sugar factory—Workmen engaged in trial season of the factory—Termination from service—Claim for re-instatement on ground of being permanent workmen—Tenability—Held, not tenable—Workmen concerned did not file any appointment order indicating permanent appointment—They failed to establish nature of their appointment—High Court erred in holding that burden of proof lay on employer to establish nature of appointment—Consequently, orders of Labour Court and High Court directing re-instatement with back-wages and retaining allowance, set aside. C D E

Respondents, who had been taken into work by Appellant-sugar factory for its trial season, were subsequently terminated from service. They claimed re-instatement and backwages contending that they were permanent appointees and their termination was contrary to the provisions of the U.P. Standing Orders. Appellant's case, however, was that Respondent-workmen were only engaged as casual employees on daily wage basis. Labour Court, with reference to the U.P. Payment of Retaining Allowances to Unskilled Seasonal Workmen of Sugar Factories Order, 1972 held that Respondents-workmen were entitled to be re-instated alongwith payment of backwages and retaining allowance. The order was upheld by High Court. Hence the present appeal. F G

Allowing the appeals, the Court

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A **HELD: The workmen belonged to the seasonal category. In the claim petition and the pleadings it was urged that they were permanent workmen. The High Court itself noted that the appointment of the workmen was not permanent as the permanent workmen have to complete their probationary period. There was no**
B **averment that the workmen had completed their probation period. It was further noted by the High Court that the workmen failed to establish the nature of their appointment. No appointment orders were filed. The High Court came to an abrupt conclusion that the burden of proof lay on the employer to establish the nature of**
C **appointment. The conclusion is clearly contrary to law. [Paras 12 and 13] [281-G-H; 282-A]**

Batala Coop. Sugar Mills Ltd. **v.** *Sowaran Singh,* **[2005] 8 SCC 481, relied on.**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1827 of 2005.

From the Judgment and Order dated 4.8.2003 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 741 of 1992.

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C.A. Nos. 1828 & 1829 of 2005.

Ajay Kumar Misra, Raj Kishor Choudhary and Prakash Kumar Singh for the Appellant.

F Sanjeev Malhotra for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. In these appeals challenge is to the order passed by a learned Single Judge of the Allahabad High Court
G dismissing the writ petitions filed by the appellants. In the writ petitions, challenge was to the awards made by the Presiding Officer, Labour Court (2), Meerut (hereinafter referred to as the 'Labour Court'). By the impugned award, the Labour Court had directed re-instatement of the respondents-workmen and payment of back wages and retaining
H allowance. The Labour Court's awards were in relation to the references

made under the Industrial Disputes Act, 1947 (in short the 'Act'). Reference in all these cases related to the claim for re-instatement and back wages to which the concerned workmen were entitled to. The claim was founded on the basis that termination of services in each case was illegal.

The reference reads as follows (by way of sample):

"Kya Sewayojako Dwara Apne Shramik Jai Veer Singh (Putra Shri Ram Lal), P.H. Recorder Ki Sewae Dinank 6.3.1985 se Samapt Kiya Jana Uchit Tatha/Athwa Vaidhanki Hai? Yadi Nahi, to Sambandhit Shramik Kya Labh/Anutosh (relief) Pane Ka Adhikari Hai, Tatha Kisi Anya Vivran Sahit?"

2. The workmen claimed that they were permanent appointees and the orders of termination were contrary to the provisions of the U.P. Standing Orders.

3. The appellants' case was that it was a seasonal factory which commenced its trial season only in the year 1984-85 and certain persons were taken as casual employees on daily wage basis and they did not have any lien on any permanent or seasonal post as the factory was to commence production after the trial season 1984-85 was over after the establishment of the sugar factory.

4. It was submitted that this was done to ascertain whether the sugar factory started proper functioning of its first season from the year 1985-86. Respondent-workman was engaged in stop-gap arrangement only for the trial season after inviting applications from the public at large, in which respondent concerned was not selected. Said respondent joined the sugar factory on 16th November, 1984 and his services were dispensed with on 6.3.1985 and by any stretch of imagination he could not have completed 240 days of services in one calendar year and as such the provisions of Section 6-N of the Act did not apply. Concerned respondent had not filed any appointment letter to show that his appointment was made against any permanent post. As noted above, the Labour Court directed reinstatement with back wages.

5. The award was assailed in writ petition on the grounds that (1)

A the Labour Court has travelled beyond the terms of reference by framing issue No.1 as the nature of appointment was neither subject matter of reference nor the finding given by it on issue No.1 was correct. (2) There was no evidence on record that the respondent was a workman and was entitled to the protection under the Act. (3) There was no appointment
B letter filed by the workman, which could show that respondent was not engaged in the trial season. Though it was dis-believed by the Labour Court that appointment of the workman was against a permanent post, yet he was granted the relief of re-instatement with back wages and as such the award cannot be sustained.

C 6. After receiving notice from the Tahsildar asking payment of the back wages to the concerned workmen the writ petitions were filed. The averment was that they had not received any order of Deputy Labour Commissioner nor any citation in pursuance thereof. The appellant came to know for the first time about recovery on receipt of the letter dated
D 15.5.1992. The workmen disputed the stand of the employer that they had not completed 240 days. Sugar factories are all of seasonal nature and according to the Standing Orders applicable in respect of sugar factories, the period of 120 days is required. The Labour Court recorded a finding that the workmen were appointed on the posts in the relevant
E season during the period from 16.11.1984 to 5.3.1985.

7. With reference to U.P. Payment of Retaining Allowances to Unskilled Seasonal Workmen of Sugar Factories Order, 1972 (in short 'Sugar Factories Order'), it was held that the workmen were entitled to
F be re-instated. The findings in this regard recorded by the Labour Court were affirmed by the High Court.

8. In support of the appeals, learned counsel for the appellant submitted that approach of the High Court is factually and legally wrong. Even if it is accepted that the period is 120 days, the workmen were not
G entitled to any relief. They admittedly worked for 109 days. The nature of appointment was not the subject matter of reference and, therefore, the conclusion of the Labour Court, as affirmed by the High Court that the workmen were entitled to be absorbed on permanent basis and re-instated with back wages, was clearly erroneous.

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9. It was wrongly held by the High Court that it was the employer to show the nature of appointment. A

10. Learned counsel for the respondents in the written submissions filed supported the orders of the Labour Court and the High Court.

11. We find that the Labour Court and the High Court have completely lost sight of the settled position in law. In *Batala Coop. Sugar Mills Ltd.* v. *Sowaran Singh,* [2005] 8 SCC 481 it was held as follows: B

> "8. We find that the High Court's judgment is unsustainable on more than one count. In *Morinda Coop. Sugar Mills Ltd.* v. *Ram Kishan and Ors.,* [1995] 5 SCC 653 it was observed as follows: C
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> 4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work. D
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> 5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work." E F

12. It was accepted that the workmen belonged to the seasonal category. In the claim petition and the pleadings it was urged that they were permanent workmen. The High Court noted that the workmen were not permanent employees. It was further noted that they failed to establish the nature of their appointment. No appointment orders were filed. It came to an abrupt conclusion that the burden of proof lay on the employer to establish the nature of appointment. The conclusion is clearly contrary to G H

A law. The Labour Court found that the workmen were appointed to posts which continued for the whole season and they were appointed on seasonal posts. After having arrived at this conclusion, the Labour Court held that the workmen were entitled to be re-instated.

B 13. It is interesting to note that the High Court itself noted that the appointment of the workmen was not permanent as the permanent workmen have to complete their probationary period. There was no averment that the workmen had completed their probation period. Undisputedly, 1984-85 was the trial season. It is to be noted that the High Court referred to Rules 4 and 6. They read as follows:

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> "4. Eligibility for retaining allowance-(i) The above retaining allowance shall be paid to those unskilled seasonal workmen who have or would have worked but, for illness or any other run avoidable cause, in a factory during whole of the second half of
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> D the last season preceding, provided that labour employed by or through contractors shall be excluded for purposes of this order.
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> 6. Provision not to apply on new factories- The provisions of this order shall not apply to new factories commencing crushing from 1971-72 or thereafter for a period of three seasons including the
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> E trial season."

14. Above being the position, the orders of the Labour Court and the High Court are set aside. The appeals are allowed with no order as to costs.

F B.B.B. Appeals allowed.