AJNALA COOP. SUGAR MILLS LTD. A

v.

SUKHRAJ SINGH

MAY 23, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.] B

Labour Laws :

Industrial Disputes Act, 1947 :

C

s. 25-F—Seasonal daily wager—Termination of Services—Held, it was for the workman to establish that he worked, during the relevant year, for more than 240 days—Since the Labour Court did not deal with the stand of the employer that workman had not completed 240 days as required and he was working as a seasonal daily wager, matter remitted to it for consideration afresh. D

Services of the respondent, a daily wager, were terminated. The Labour Court held the termination as illegal for want of compliance of Section 25-F of the Industrial Disputes Act, 1947, and directed his reinstatement. The High Court dismissed the writ petition of the empoyer holding that the E **Management was required to maintain the muster rolls and it failed to produce the records to support its contention that during the relevant period the workman, a seasonal daily wager, had not completed the requisite period of 240 days. Aggrieved, the employer filed the instant appeal.**

Disposing of the appeal, the Court F

HELD : It was for the workman to establish that he had worked for more than 240 days. The High Court did not examine the issues in proper perspective as to whether the Labour Court did not specifically deal with the stand of the appellant that the workman had not completed more than 240 days and he was working as a seasonal daily wager and after the season was G **over there was no engagement. In the circumstances, the order of the High Court is set aside and the matter is remitted to the Labour Court for fresh consideration. [Paras 7 and 8] [782-A, B]**

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A *Range Forest Officer* **v.** *S.T. Hadimani,* **[2002] 3 SCC 25,** *Essen Deinki* **v.** *Rajiv Kumar,* **[2002] 8 SCC 400 and** *Batala Coop. Sugar Mills Ltd.* **v.** *Sowaran Singh,* **[2005] 8 SCC 481, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2831 of 2007.

B From the Final Judgment and Order dated 11.12.2003 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 19172 of 2003.

M.C. Dhingra for the Appellant.

Dinesh Kumar Garg, Dr. Bheem Pratap Singh and Manoj Kumar Ahmad C for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. Leave granted.

D 1. Challenge in this appeal is to the order passed by Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant. In the writ petition challenge was to the award of the Labour Court, Amritsar (in short 'Labour Court') dated 27.112002, whereby alleged termination of services of the respondent was held to be illegal for want of compliance with the requirements of Section 25-F of the Industrial Disputes Act, 1947 (in E short the 'Act'). The respondent was directed to be reinstated with continuity of service with back wages. The appellant's stand was that the workman had not completed 240 days in 12 months preceding the date of termination of the service and, therefore, the management was not required to comply with the provisions of Section 25-F of the Act. High Court noted that the workman F had joined the service in 1991. The services were dispensed with in the year 1993. It was noted that the management which was required to maintain the muster rolls failed to produce the records to support its contention that during this period the workman had not completed the requisite period of 240 days. Accordingly, the award passed by the Labour Court was found to be in order and writ petition was dismissed.

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2. Learned counsel for the appellant submitted that the workman had not worked for more than 240 days in the preceding 12 months. Except bare assertion no material was produced. On the contrary the appellant has categorically stated that the respondent had not worked for more than 240 days.

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3. In this connection reference was made to the assertion made before the Labour Court that the workman was engaged on daily wager basis and his services were only seasonal. It was specifically asserted that after the season was over the respondent workman did not turn up and he had not completed 240 days of service. He was not permanent employee of the appellant and, therefore, reference was not maintainable. Since the workman was employed only for seasonal work, his services were not to be continued after the season was over.

4. Learned counsel for the respondent on the other hand submitted that the Labour Court as well as the High Court referred to the material on record and categorically held that the appellant had been working for more than 240 days. Certain documents in this regard were referred to.

5. This Court in several cases has held that the workman has to prove that the he has worked for more than 240 days. (See: *Range Forest Officer* v. *S.T. Hadimani,* [2002] 3 SCC 25; *Essen Deinki* v. *Rajiv Kumar,* [2002] 8 SCC 400 and *Batala Coop. Sugar Mills Ltd.* v. *Sowaran Singh,* [2005] 8 SCC 481).

6. In *Batala Coop. Sugar Mills* (supra) it was observed as under:

> "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:
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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.
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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.

A 7. Learned counsel for the appellant is correct that it was for the workman to establish that he had worked for more than 240 days. Learned counsel for the respondent has referred to certain materials which have been filed as additional documents in this case. These were not part of the records before the Labour Court or the High Court. It appears that the High Court did not examine the issues in the proper perspective as to whether Labour Court B did not specifically deal with the stand of the appellant that the workman had not completed more than 240 days as he was working as a seasonal daily wager and after the season was over there was no engagement.

8. In the circumstances we set aside the order of the High Court and C remit the matter to the Labour Court for fresh consideration.

9. Considering the fact that the matter is pending since long, we request the Labour Court to dispose of the matter within three months from the date of receipt of this order after due notice to the parties.

D 10. The appeal is disposed of accordingly with no order as to costs.

R.P. Appeal disposed of.