

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3002 OF 2007

U.P. State Sugar Corporation Ltd.

Now

M/s Dowiala Sugar Company Ltd. Doiwala

Through its Executive Director

...Appellant

Versus

Niraj Kumar and Ors.

...Respondents

With

Civil Appeal No. 4697/2006

Civil Appeal No. 3189/2007

Civil Appeal No. 3190/2007

Civil Appeal No. 3191/07

Civil Appeal No. 3192/2007

JUDGEMENT

R.M. Lodha, J.

This group of six appeals by special leave involving identical issues was heard together and is being disposed of by a common judgment.

2. In Civil Appeal No. 3002/2007, both the parties are represented by their counsel and, therefore, we deem it appropriate to take up the facts from this appeal.

3. The appellants, U.P. State Sugar Corporation Limited, (for short, "Corporation"), is engaged in manufacture of white crystal sugar by vaccum process. The sugar Unit is a seasonal Unit which functions for a period of about 5 months in a year depending upon the allocation of sugar cane to the concerned Unit by the Cane Commissioner, U.P.. During the crushing season 1996-1997, the appellant engaged Niraj Kumar, the respondent no. 1 (for short, "workman"), purely on temporary/daily wages basis. According to the Corporation, the workman was engaged as weighment Clerk as an additional hand in the mid of the crushing season 1996-97 i.e. from January 1, 1997; the workman worked upto April 15, 1997 and on and after that date, his engagement ceased.

4. The workman raised an industrial dispute alleging that by not engaging him in the next crushing season viz., 1997-98, although he presented himself, his services were illegally terminated. He set up the case that he had worked with the Corporation during the crushing season 1996-97 from January

1, 1997 for full second part and was, accordingly, entitled to be engaged in next crushing season and although he presented himself, he was not given any work and, thus, under the Standing Orders his services are deemed to have been illegally terminated.

5. The Corporation contested the claim of the workman and set up the case that during the crushing season, the work load in sugar Unit increases manifold which at times necessitates engagement of additional hands on daily wages to cater to the additional workload. During the crushing season 1996-97, sugarcane purchase centres were allotted by the Cane Commissioner which created additional workload and for that additional hands were engaged on daily wages at various centres. The workman was one of such additional hands. He was engaged on January 1, 1997 and worked as such only upto April 15, 1997 whereafter the additional workload for which he was engaged, came to an end and, therefore, his engagement automatically ceased w.e.f. April 15, 1997. The Corporation also stated that the duration of crushing season 1996-97 was from November 19, 1996 until May, 1997. The Corporation

denied that there was any illegal termination of services of the workman.

6. Both the parties led oral as well as documentary evidence in respect of their respective case. The Presiding Officer, Labour Court, U.P. , Dehradun, after hearing the parties passed the award on April 17, 2000 holding that by not engaging the workman in the crushing season 1997-98 which was to start on November 1997, the Corporation can be said to have terminated the services of the workman illegally. The Labour Court directed the Corporation to engage the workman in the next season and also awarded compensation of Rs. 10,000/- to him.

7. The Corporation challenged the award before the High Court of Uttranchal at Nainital. The principal ground taken by the Corporation before the High Court was, as was the case before the Labour Court, that the workman was a temporary workman as classified under the Standing Orders and, therefore, the direction of the Labour Court was not justified. The workman defended the award before the High Court.

8. The High Court held that there was no perversity in the finding recorded by the Labour Court that the workman was a seasonal workman. However, taking note of a decision

of this Court in *Morinda Cooperative Sugar Mills Limited vs. Ram Kishan*¹, the High Court modified the award by directing the Corporation to engage the workman in every crushing season when the purchase centres are opened at mill or at any other place.

9. The Standing Orders incorporating the conditions of employment of workmen in Vaccum Pan Sugar Factories in U.P. define 'Season' thus:

““Season” means the period commencing from the date when the crushing commences till the date when crushing ends. Provided that for these departments which are not in operation when crushing begins and which continue in operation after crushing ends, the “season” so far as it affects the workmen in those departments, shall commence with the date the department commences operation and shall end when the department ceases to be operated.”

10. Workmen, in the Standing Orders, are classified in six categories viz. ; (i) Permanent, (ii) Seasonal, (iii) Temporary, (iv) Probationers, (v) Apprentices, and (vi) Substitutes.

11. A seasonal workman is:

“One who is engaged only for the crushing season:

Provided that if he is a retainer, he shall be liable to be called on duty at any time in the off-season and if he refuses to join or does not join, he shall lose his

¹ JT 1995 (6) SC 547

lien as well as his retaining allowance. However, if he submits a satisfactory explanation of his not joining duty, he shall only lose his retaining allowance for the period of his absence.”

12. Under the Standing Orders, a temporary workman is one who is engaged for a work of temporary or casual nature or to fill in a temporary need of extra hands on permanent, seasonal or temporary posts.

13. It is pertinent to notice that for a temporary workman, Standing Orders do not provide for any lien of employment in the succeeding season based on the employment in the last preceding season. As regards, seasonal workmen, there are special conditions. Clause K(1) of the Standing Orders is relevant for this purpose which reads thus:

“ K. Special conditions governing employment of seasonal workmen-

1. A seasonal workman who has worked or, but for illness or any other unavoidable cause, would have worked under a factory during the whole of the second half of the last preceding season will be employed by the factory in the current season.

Explanation – Unauthorised absence during the second half of the last preceding season of a workman has not been validly dismissed under these Standing Orders and of a workman who has been re-employed by the management in the current season, shall be deemed to have been condoned by the management.”

14. The question that falls for our consideration is: whether in the facts noticed above, the workman was engaged as a temporary workman or seasonal workman and whether he is entitled to be re-employed in the succeeding year?

15. It is not that the daily rated employees engaged during the season by the Corporation automatically become seasonal workmen. If an employee is engaged for work of a temporary or casual nature like additional workload during a season, his engagement would be that of a temporary workman. Having perused the award of the Labour Court carefully, we find it difficult to fathom on what basis the Labour Court recorded the finding that the first respondent was engaged as seasonal workman. The burden lay on the workman to establish that he was engaged as 'seasonal workman'. There is no material from which it can be held that the workman has discharged his burden. The High Court brushed aside the objection raised by the Corporation that respondent no.1 was engaged on temporary basis in one line by observing that the counsel of the petitioner has not been able to show any perversity in the finding recorded by the Labour Court. In our view, the finding recorded by the Labour Court that the

respondent No. 1 was engaged as a seasonal workman, is based on no legal evidence and High Court was not justified in affirming the said finding.

16. Even if we assume that the respondent no. 1 was engaged as a seasonal workman, it is pertinent to notice that before the Labour Court, it was an admitted position that the crushing season 1996-97 commenced from November 11, 1996. That the season came to an end on May 3, 1997 was not disputed. It was also an admitted position before the Labour Court that the workman was engaged on January 1, 1997 and worked upto April 15, 1997. These admitted facts would amply show that the workman had neither worked in the previous full crushing season nor he remained in employment during the whole of the second half of the crushing season 1996-97. The Standing Orders contemplate lien of a seasonal workman in the succeeding crushing season if he has worked in the previous full crushing season or in the whole second half of that crushing season. It is true that 'second half of the crushing season' is not defined in the Standing Orders but in absence thereof an ordinary meaning of the expression "second half of the crushing season" has to be given and that would mean the crushing

season be divided into two parts and later part of the crushing season would be second half of the season.

17. To be entitled for reemployment in the succeeding crushing season, a seasonal workman has to show that he worked in the previous full crushing season or in whole of the second half of the last preceding year. Merely because workman has worked during the part of the previous crushing season, he does not become entitled for re-employment in the succeeding season. If a claim of re-employment is based on engagement in the second half of season, such engagement has to be for full second half of the season i.e. until the end of that season. In view of the admitted facts that have come on record and legal position discussed above, the conclusion is inescapable that workmen in these appeals have no right to be re-employed in the succeeding crushing season. We are, therefore, unable to uphold the decision of the High Court.

18. Before we part with the judgment, we may observe that the decision of this Court in *Morinda Cooperative Sugar Mills Limited*¹ referred to by the High Court in its judgment has no application to the present fact situation and the High Court was not right in directing the Corporation to engage the workman

in every crushing season as and when the purchase centres are opened at mill or at any other place based on that judgment.

19. As a result of foregoing discussion, these appeals have to be allowed and are allowed. The judgment of the High Court and the award impugned in the present appeals are set aside. The parties will bear their own costs.

New Delhi
July 31, 2009.

.....J
(Tarun Chatterjee)

.....J
(R. M. Lodha)

