CASE NO.:
Appeal (civil) 7981 of 2004

PETITIONER:
Batala Cooperative Sugar Mills Ltd.

RESPONDENT:
Sowaran Singh

DATE OF JUDGMENT: 07/10/2005

BENCH:
Arijit Pasayat & Dr. AR. Lakshmanan

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant and upholding the award made by the Presiding Officer, Labour Court, Gurdaspur.

Factual background in a nutshell is as follows:

The respondent (hereinafter referred to as the 'workman') made a grievance before the State Government that his services were illegally terminated by the appellant (hereinafter referred to as the 'employer'). Reference was made by the State Government under Section 10(1) of the Industrial Disputes Act, 1947 (in short the 'Act') for adjudication the following question:

"Whether termination of services of sh. Sowaran singh workman is justified and in order? If not, to what relief/exact amount of compensation is he entitled?

The case of the workman as pleaded in the demand notice was that he was appointed by the employer w.e.f. 1.4.1986 on regular basis against the regular post and was being paid Rs. 1200 p.m. His services were illegally terminated by the employer on 12.2.1994 without any notice, notice pay and retrenchment compensation. No charge-sheet was filed or enquiry held. Though he approached the employer, but to no effect and, therefore, he had prayed for his re-instatement with continuity of service and back wages. The employer filed its written statement taking the stand that the reference was factually and legally erroneous as the services of the workman were never terminated on 12.2.1994 as alleged. In fact he had abandoned the job. He was engaged on casual basis on daily wages for specific period and for specific work. He was never issued any appointment order in respect of any regular post and/or on regular basis. There was also no vacancy at the relevant time. The Labour Court framed four issues for adjudication which are as under:

"1. Whether the workman abandoned the job of his own accord?

2. whether the reference is not maintainable as alleged in P.O. of W/S?

3. Whether the applicant is entitled to the amount claimed in the application?

4. Relief."

The Labour Court was of the view that though the stand of the employer was that the respondent-workman was employed on casual basis on daily wages for specific work and for specific period, yet evasive reply was given in

respect of the workman's stand that he was appointed in April 1986. It was observed that no attendance record was produced. There was also no material to show that the workman had left the job on his own accord and in any event the employer had not proved that the workman had worked for less than 240 days in 12 calendar months preceding the date of termination. Accordingly, it was held that there was violation of Section 25F of the Act. Direction was given to re-instate the workman with 50% back wages.

The employer filed a Writ Petition which was dismissed by the impugned order. It was held by the High Court that there was no legal or factual infirmity in the award. It was noted that the employer had failed to produce muster roll which was mandatorily required to be maintained under Section 25-D of the Act.

In support of the appeal, learned counsel for the appellant submitted that both the Labour Court and the High Court fell in grave error by acting on factually and legally erroneous premises. The definite stand of the appellant was that the workman was engaged on casual basis on daily wages for specific work and for specific period. Details in this regard were undisputedly filed. Therefore, the provisions of Section 2(oo)(bb) of the Act are clearly applicable. In addition, the onus was wrongly placed on the employer to prove that the workman had not worked for 240 days in 12 calendar months preceding the alleged date of termination. No material was placed on record by the workman to establish that the workman had offered himself for job after 12.2.1994. The award of the Labour Court does not speak of the requirement to maintain the muster roll. This point was taken up suo moto by the High Court without any opportunity to the appellant to have its say.

In response, learnd counsel for the respondent submitted that in the factual scenario as noticed by the Labour Court the award was made and the High Court has rightly refused to interfere with it.

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:

"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.

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.''

The position was re-iterated by a three-Judge Bench of this Court in Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd. and Anr., [1997] 10 SCC 599. It was noted as follows:

"The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan, in para 3, this Court has dealt with engagement of the seasonal

workman in sugarcane crushing; in para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succedding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above.''

Section 2 (oo) (bb) reads as follows:

''(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein''.

The materials on record clearly establish that the engagement of the workman was for specific period and specific work.

In view of the position as highlighted in Morinda Coop. Sugar Mills and Anil Bapurao's cases (supra), the relief granted to the workman by the Labour Court and the High Court cannot be maintained.

So far as the question of onus regarding working for more than 240 days is concerned, as observed by this court in Range Forest Officer v. S.T. Hadimani, [2002] 3 SCC 25 the onus is on the workman. It was noted in the said judgment as follows:

"2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10.8.1998 came to the conclusion that the service had been terminated, without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was no the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.

"3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an 'industry' or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar, [2001] (9) SCC 713. In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was so denied by the appellant. It was then for the claimant to lead evidence to show that he

had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde, appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months form today.''

The appeal, therefore, deserves to be allowed which we direct. But at the same time as observed in paragraph 5 of Morinda Sugar Mills case (supra) the modalities indicated shall be followed by appellant-employer. In fact before the Labour court, it was clearly stated that the employer was willing to offer engagement to the workmans and when necessity arises. If there is any requirement for engagement the cases of respondent-workman shall be considered in its proper perspective and necessary orders shall be passed. In the ultimate, the appeal is allowed but in the circumstances, there will be no order as to costs.