CASE NO.:
Appeal (civil) 4771 of 2006

PETITIONER:
Bhogpur Co-op Sugar Mills Ltd.

RESPONDENT:
Harmesh Kumar

DATE OF JUDGMENT: 10/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 17885 of 2005)

S.B. SINHA, J.

Leave granted.

Appellant is a cooperative society. It is registered under the Punjab Cooperative Societies Act, 1961. It operates a sugar mill. It is said to be a seasonal industry. At the beginning of the season, workmen are recruited and they are retrenched at the end of it. Respondent was appointed as a seasonal workman. He was appointed on daily wage basis. On or about 14.03.1992, he raised an industrial dispute in terms of Section 2A of the Industrial Disputes Act, 1947 (for short "the Act") pursuant whereto or in furtherance whereof the State of Punjab in exercise of its jurisdiction under Section 10(1)(c) of the Act referred the following dispute to the Labour Court by a notification dated 8.07.1996:

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

The Presiding Officer, Labour Court, Gurdaspur opining that the workman has not been able to establish that he had worked for 240 days held that the respondent having not been called by the appellant in the subsequent crushing seasons and also having called his juniors violated the provisions of Section 25-G of the Act. He, therefore, passed the following award:

"In the result, in view of my findings on the above issue, I pass an award directing the respondent to reemploy the workman from the season in which juniors to him were called and workman was not called. The workman shall also be entitled to back wages, etc. with all allied and monetary benefits which are granted to his juniors from their joining when workman was not called\005"

A writ petition was filed by the appellant herein questioning the legality and/ or validity of the said award and by reason of the impugned judgment a Division Bench of the High Court rejected the contention raised by the appellant herein that the provisions of Section 25-G of the Act cannot be said to have any application in the instant case stating:

"We, however, find no merit in this argument for the reason that a positive finding has been recorded by the Tribunal that persons junior to the workman had been retained and it is also admitted by the Management that they had not offered any

appointment to the respondent on account of pendency of the dispute in Court. We are of the opinion that had it been the case of the Management that the exigencies of services did not warrant his re-employment, something could be said in its favour but this is not the case of the Management. No offer was made to the workman on account of the pendency of the proceedings before the Labour Court."

The fact that the appellant operates a seasonal factory and the respondent had not been in continuous service for 240 days during twelve months preceding his termination is not in dispute.

Contention of the appellant is that the termination of the respondent's services did not come within the purview of the term 'retrenchment' as contained in Section 2(oo)(bb) of the Industrial Disputes Act.

The Labour Court derived its jurisdiction from the terms in reference. It ought to have exercised its jurisdiction within the four corners thereof.

The principal question which was referred by the State Government was as to whether the termination of services of the respondent was justified. The Labour Court was, therefore, not required to go into the question as to whether the appellant was bound to take the services of the respondent in all subsequent seasons or not.

We are not oblivious of the distinction in regard to the legality of the order of termination in a case where Section 25-F of the Act applies on the one hand, and a situation where Section 25-G thereof applies on the other. Whereas in a case where Section 25-F of the Act applies the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions of Sections 25-G and 25-H thereof he may not have to establish the said fact. [See Central Bank of India vs. S. Satyam & Ors.(1996) 5 SCC 419, Samishta Dube vs. City Board, Etawah & Anr. (1999) 3 SCC 14, Regional Manager, SBI vs. Rakesh Kumar Tewari (2006) 1 SCC 530 and Jaipur Development Authority v. Ram Sahai & Anr.8Civil Appeal No. 4626 of 2006 decided on 31st October, 2006]

However, category-wise seniority is required to be maintained when different categories of workmen are appointed so as to apply the principle of 'last-cum-first go'. A seniority list is also required to be maintained so as to enable the employer to offer services to the retrenched employees maintaining the order of seniority. The said provisions, however, would have no application in a case where Section 2(oo)(bb) of the Act is attracted. The said provision reads, thus:

"2. (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)-(b) * * *
(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;"

Termination of services of a workman as a result of non-renewal of the contract of employment on its expiry or termination of such contract of appointment under a stipulation in that behalf contained therein would, thus, not attract the definition of the term 'retrenchment'. [See Municipal

Council, Samrala v. Sukhwinder Kaur, (2006) 6 SCC 516 and Municipal Council, Samrala v. Raj Kumar, (2006) 3 SCC 81]

The issue is squarely covered by a decision of this Court in Morinda Coop. Sugar Mills Ltd. v. Ram Kishan and Others [(1995) 5 SCC 653] wherein it was opined:

"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.
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."

Yet again, recently in Haryana State Agricultural Marketing Board v. Subhash Chand and Another [(2006) 2 SCC 794], this Court held:
"It is the contention of the appellant that the respondent was appointed during the wheat season or the paddy season. It is also not in dispute that the appellant is a statutory body constituted under the Punjab and Haryana Agriculture Produce Marketing Board Act. In terms of the provisions of the said Act, indisputably, regulations are framed by the Board laying down the terms and conditions of services of the employees working in the Market Committees. A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a consideration period(s)."

[See also Municipal Council, Samrala v. Sukhwinder Kaur, (2006) 6 SCC 516 and State of Rajasthan v. Sarjeet Singh & Anr., 2006 (10) SCALE 417]

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.