



2024:UHC:9670

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE,
SHRI JUSTICE MANOJ KUMAR TIWARI

18 December, 2024

Writ Petition (M/S) No. 3411 of 2023

Harendra Singh

--Petitioner

Versus

M/s Uttam Sugar Mills

Company Limited and another

--Respondents

With

Writ Petition (M/S) No. 3323 of 2023

Writ Petition (M/S) No. 3325 of 2023

Writ Petition (M/S) No. 3326 of 2023

Writ Petition (M/S) No. 3328 of 2023

Writ Petition (M/S) No. 3329 of 2023

Writ Petition (M/S) No. 3332 of 2023

Writ Petition (M/S) No. 3337 of 2023

Writ Petition (M/S) No. 3424 of 2023

Writ Petition (M/S) No.3426 of 2023

Writ Petition (M/S) No. 3427 of 2023

Writ Petition (M/S) No. 3428 of 2023

Writ Petition (M/S) No. 3429 of 2023

Writ Petition (M/S) No. 3430 of 2023

Presence:-

Mr. M.C. Pant, Ms. Anupriya Kukreti and Mr. Bhuwan Bhatt,
Advocates for the petitioners.

Mr. Piyush Garg, Advocate for the respondents.

JUDGMENT

Seven persons, employed in M/s Uttam Sugar Mills Company Ltd. (for short 'Sugar Mill'), raised a dispute against termination of their services, which was referred for adjudication to Labour Court, Haridwar.



Learned Labour Court decided the reference in favour of workmen and directed M/s Balaji Corporates Service (for short 'the contractor'), through whom these persons were engaged, to reinstate them with full backwages and all consequential benefits. Seven awards were passed by learned Labour Court, which have been challenged in these writ petitions. The workmen concerned have challenged the award by contending that the direction to reinstate the workmen should have been issued to the Sugar Mill and not to the contractor. The contractor has also challenged the award with the contention that the workmen were engaged as seasonal employee and it is not a case of termination, as all the workmen voluntarily abandoned their services.

2. Since common questions of law and fact are involved in these writ petitions, therefore they are being heard together and are being decided by a common judgment. However, for the sake of brevity, facts of Writ Petition (M/S) No.3411 of 2023 alone are being considered and discussed.

3. Mr. Harendra Singh (workman) has filed Writ Petition (M/S) No. 3411 of 2023 challenging the award dated 07.06.2023 rendered by learned Labour Court.

4. Heard learned counsel for the parties and perused the award.

5. Learned counsel for the petitioner submits that petitioner was appointed as Weighment Clerk in Uttam Sugar Mills, Roorkee, Haridwar in the year 2006



and he served as Seasonal Weighing Clerk upto 2015 and his services were terminated w.e.f. 25.11.2015; he was directly appointed by the Sugar Mill and a Weighment Clerk is permitted to weigh sugarcane only when he is directly appointed by the Sugar Mill and District Magistrate has issued license to him. He submits that there was a relationship of 'employer and employee' between Sugar Mill and the petitioner, and a contractor was brought in only as a camouflage/ruse to avoid labour law benefits to the petitioner. He submits that learned Labour Court while deciding the reference in favour of the petitioner overlooked this material aspect, which has resulted in miscarriage of justice.

6. The written statement filed by petitioner and workmen is on record as Annexure-2 to the writ petition. Perusal thereof reveals that petitioner had pleaded that he was directly appointed by the Sugar Mill, but, in the year 2008 a contractor was brought in to deny him the protection of labour welfare legislations. Provision contained in Section 2(i) (iv) was also highlighted in the written statement by the workman, which reads as under:-

"2(i) 'Employer' includes –

....

....

(iv) where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily part of the industry, the owner of such industry."



7. Sugar Mill in its written statement contended that there is no direct relationship of 'master and servant' between the Sugar Mill and the workman, and the workman was an employee of the contractor-M/s Balaji Corporates Service, Dehradun; contractor is a necessary party, but, has not been joined as a party. M/s Balaji Corporates Service was added as party vide order dated 14.03.2019 passed by learned Labour Court, Haridwar. The contractor (respondent no. 2) stated in his written statement that it is supplying manpower to Uttam Sugar Mills from the financial year 2008; petitioner left his job of his own volition and he has filed this case to take monetary benefits. English Translation of the question, which was referred for adjudication to learned Labour Court, Haridwar, is as follows:-

Whether termination of service of Sri Harendra Singh s/o Sri Mahendra Singh, Cane Clerk w.e.f. 25.11.2015 by the employer is just and legal? If not, concerned workman is entitled to what relief and which other particular?

8. Learned Labour Court decided the question referred for adjudication in favour of the workman and declared that termination of his services is unjust and illegal and directed M/s Balaji Corporates Service (contractor) to reinstate the workman with full backwages from 25.11.2015 and other consequential benefits, including continuity of service. The contractor was further directed to pay Rs.2000/- as litigation expense to the workman.



9. The workmen have challenged the award rendered by learned Labour Court on the ground that as they were employees of Uttam Sugar Mills, therefore, instead of directing the Sugar Mills to reinstate them in service, a contractor has been directed to reinstate them and the award rendered by learned Labour Court is, therefore, erroneous to this extent. M/s Balaji Corporates Service (contractor) has also challenged the award on the ground that in a dispute between Uttam Sugar Mills and the Workmen, it was unnecessarily dragged by adding him as party vide order dated 14.03.2019 passed by learned Labour Court and it has wrongly been made liable to reinstate the workmen and to pay backwages to them.

10. The impugned award is on record as Annexure-1 to the writ petition. Learned Labour Court has discussed the contentions raised by the parties and also the evidence led in detail, however, learned Labour Court appears to have completely overlooked the definition of 'employer' as given in Section 2 (i) of U.P. Industrial Disputes Act, 1947, particularly, Clause (iv) thereof, which was referred to in paragraph no. 7 of the written statement filed by the workmen.

11. Learned counsel for the petitioners placed heavy reliance upon the judgment rendered by Constitution Bench of Hon'ble Supreme Court in the case of *M/s Basti Sugar Mills Ltd. v. Ram Ujagar and others*, AIR 1964 SC 355. Paragraph nos. 6 to 12 of the said judgment are reproduced below:-



“6. Section 2(i) of the Act contains an inclusive definition of employer. The effect of sub-cl. (iv) of S. 2(i) is that where the owner of any industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of any work which is ordinarily a part of the industry, the owner of such industry is an employer within the meaning of the Act. Mr Pathak's suggestion that the effect of this definition is that the owner of the industry becomes the employer of the contractor is wholly untenable and can even be described as fantastic to deserve serious consideration. The obvious purpose of this extended definition of the word “employer” is to make the owner of the industry, in the circumstances mentioned in the sub-clause, the employer of the workmen engaged in the work which is done through contract. The words used in the sub-clause are clearly sufficient to achieve this purpose.

7. It is true, as pointed out by Mr Pathak, that the definition of the word “workmen” did not contain any words to show that the contract labour was included. That however does not affect the position. The words of the definition of workmen in S. 2(z) to mean “any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied” are by themselves sufficiently wide to bring in persons doing work in an industry whether the employment was by the management or by the contractor of the management. Unless however the definition of the word “employer” included the management of the industry even when the employment was by the contractor the workmen employed by the contractor could not get the benefit of the Act since a dispute between them and the management would not be an industrial dispute between “employer” and workmen. It was with a view to remove this difficulty in the way of workmen employed by contractors that the definition of employer has been extended by sub-cl. (iv) of S. 2(i). The position thus is: (a) that the respondents are workmen within the meaning of S. 2(z), being persons employed in the industry to do manual work for reward, and (b) they were employed by a contractor with whom the appellant Company had contracted in the course of conducting the industry for the execution by the said contractor of the work of removal of press-mud which is ordinarily a part of the industry. It follows therefore from S. 2(z) read with



sub-cl. (iv) of S. 2(i) of the Act that they are workmen of the appellant Company and the appellant Company is their employer. There is no substance therefore in the first point raised by the learned counsel for the appellant.

8. The second point viz. that this definition contravenes the appellant's fundamental rights under Art.19(1)(g) is equally devoid of substance. Assuming that the result of this definition of employer in sub-cl. (iv) of S. 2(i) is the imposition of some restrictions on the appellant's right to carry on trade or business, it cannot be doubted for a moment that the imposition of such restrictions is in the interest of the general public. For, the interests of the general public require that the device of the engagement of a contractor for doing work which is ordinarily part of the industry should not be allowed to be availed of by owners of industry for evading the provisions of the Industrial Disputes Act. That these provisions are in the interests of the general public cannot be and has not been disputed. That being the position, the impugned definition which gives the benefit of the provisions of the Act to the workmen engaged under a contract in doing work which is ordinarily part of the industry cannot but be held to be also in the interests of the general public.

9. This brings us to Mr Pathak's main contention that in any case the respondents are not "workmen" within the meaning of the Standing Orders and so cannot get the benefit of the minimum wage prescribed thereby. In the Standing Orders the word "workmen" is defined to mean "any person (including an apprentice) employed by a factory, to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied" but does not include any person mentioned in cls. (i) and (ii). We are not concerned in this case with these clauses. Mr Pathak argues that on a reasonable construction, the words "employed by a factory" in this definition can only mean "employed by the management of the factory" and cannot include persons employed by a contractor of the factory. He points out that this definition of "workmen" in the Standing Orders uses the words "employed by a factory" though the definition of "workmen" in the Act itself uses the words "employed in any industry" and contends that the words "by a factory" were deliberately used instead of the words "in a factory" to exclude persons other than those employed by the management of the factory from the benefit of the Standing Orders.



Neither grammar nor reason supports this argument.

10. On the ordinary grammatical sense of the words “employed by a factory” they include, in our opinion, every person who is employed to do the work of the factory. The use of the word “by” has nothing to do with the question as to who makes the appointment. The reason why “by” was used instead of “in” appears to be to ensure that if a person has been employed to do the work of the industry, whether the work is done inside the factory or outside the factory he will get the benefit of the Standing Orders.

11. We can also see no reason why the Government in making the Standing Orders would think of denying to some of the persons who fall within the definition of workmen under the Act, the benefit of the Standing Orders. The Standing Orders were made under S. 3(b) of the Act under which the State Government may make provision “for requiring employers, workmen or both to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order”. The purpose of the order was thus clearly to require employers to observe certain terms and conditions of employment of their workmen as defined in the Act. It is unthinkable as that in doing so the Government would want to exclude from its benefits — particularly, that of the minimum wage — a class of workmen, who would otherwise get the benefit under the definitions of workmen and employer in the Act itself. No reason has been suggested and we cannot think of any.

12. We have therefore come to the conclusion that the words “employed by factory” are wide enough to include workmen employed by the contractor's factory also.”

12. The issue as to whether M/s Uttam Sugar Mills Company Ltd. is the employer or M/s Balaji Corporates Service is the employer in respect of the petitioners has not been considered in the light of provision contained in Section 2 (i) (iv) of the U.P. Industrial Disputes Act, 1947, which was also referred to by the workmen in their written statements,



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therefore, the impugned award is liable to be set aside on this short point alone.

13. Accordingly, Writ Petitions are allowed. The awards rendered by learned Labour Court, Haridwar, impugned in these writ petitions, are set aside and the matter is remanded back to learned Labour Court, for decision afresh. This Court hopes and expects that learned Labour Court shall decide the reference, as per law, within eight months from the date of production of certified copy of this order.

MANOJ KUMAR TIWARI , A.C.J.

Dt: 18th December, 2024
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Digitally signed by NAVEEN CHANDRA
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