

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.07.2019

DATED : 08.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 1098 of 2016
And
C.M.P.No. 14210 of 2016

Chief Executive
Formerly Jawaharlal Nehru Sugar Mills
Perambalur Sugar Mills Ltd.
Eraiyr, Veppanthattai Taluk
Perambalur District. ... Petitioner/Appellant

Vs.

1. The Joint Director of Industries
Safety and Health
Tiruchirappalli - 620 020.
2. Thiru. N.Varadarajan
3. General Secretary
Nehru Sugar Mills
National General Workers' Union
Eraiyr, Veppanthattai Taluk
Perambalur District. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the Order passed by the learned Single Judge made in W.P.No.
4015 of 2015 dated 12.07.2016.

W.P.No.4015/2015:

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorari to call for the
records of the 1st Respondent made in and connected with
E/286/2013 dated 10.11.2014 and quash the same.

For Appellant : Mr. R.Parthiban
For R1 : Mr. V.Jayaprakash Narayanan
Government Pleader
For R2 : Mr.K.Dhananjayan
For R3 : No appearance

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J.)

The appellant, Chief Executive Officer, Perambalur Sugar Mills Ltd., Formerly Jawaharlal Nehru Sugar Mills, has filed the present Writ Appeal under Clause 15 of the Letters Patent challenging the Order of the learned Single Judge dated 12.07.2016 dismissing W.P.No. 4015 of 2015 which Writ had been filed by the appellant, calling into question the Order dated 10.11.2014 passed by the first respondent, Joint Director of Industries, Safety and Health, conferring permanent status to the workmen, the second respondent N.Varadarajan, who was working as a driver in the appellant Sugar Mills.

2. The workman, the second respondent, N.Varadarajan had approached the first respondent, Joint Director of Industries, Safety and Health, Tiruchirappalli, under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 seeking conferment of permanent status under Section 3 of the said Act claiming that he had worked in the appellant Sugar Mill for 480 days continuously from 30.01.2007 for two consecutive calendar years.

3. After holding enquiry and affording opportunity to both the contesting parties, the first respondent had, by Order dated 10.11.2014 granted conferment of permanent status as driver to the second respondent and had further directed the appellant to extend all monetary benefits and outstanding cash benefits from the date of joining the appellant Sugar Mill.

4. This Order has been challenged by the appellant by filing W.P.No. 4015 of 2015. By order dated 12.07.2016, the learned Single Judge dismissed the Writ Petition. The reasoning of the learned Single Judge is extracted below for better appreciation:-

"5. It is an admitted fact that the second respondent was engaged as a Driver in the petitioner Mill and the only

contentious issue is that whether he was engaged seasonally or as a regular employee. From the document issued by the petitioner Mill, regarding the number of days on which the second respondent had worked as a driver, on casual basis, would falsify the contention of the petitioner. In 2008, the second respondent had worked for 241.5 days; in 2009, he had worked continuously for 307.5 days, in 2010, he had worked for 309.5 days, in 2011, for 292.5 days, in 2012, for 304 days and in 2013, for 306 days. The tabular column which gives the above details is extracted hereunder:-

PERAMBALUR SUGAR MILLS LTD., ERAIYUR
NO. OF DAYS FOR N.VARADHARAJAN CASUAL DRIVER
FROM 31.10.2007 TO 31.12.2013
DOJ: 31.10.2007

Year	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
2007	-	-	-	-	-	-	-	-	-	1	22.5	26	49.5
2008	19	16.5	26	26	26	26	4	-	22	26	24	26	241.5
2009	26	24	26	26	26	25.5	26	26	26	24	26	26	307.5
2010	26	25	25	25	25	25	25	25	25	24.5	26	26	309.5
2011	26	24	24	24	24	23	15.5	25	23	26	26	26	292.5
2012	26	26	26	20	26	26	26	24	26	26	26	26	304
2013	26	26	24	26	24	25	26	26	26	25	26	26	306

The above particulars regarding the number of days worked by the 2nd respondent would show that he was a regular employee and not a seasonal worker. Even if the petitioner Sugar Mill is a seasonal industry, it would not mean that the industry cannot engage an employee on regular basis. A perusal of the above details would clearly show that he was regularly engaged during all the months, every year and therefore, the 2nd respondent was, in fact, a regular employee of the petitioner establishment. It is also evident that the 2nd respondent was engaged for more than 480 days in 2 years and that he was not seasonally engaged, but, engaged regularly every month. Therefore, the contentions of the petitioner that the 2nd

respondent was engaged as a casual employee and the petitioner Sugar Mill is also a seasonal industry have to be rejected. Even as per the order dated 31.07.1991 passed by the Commissioner of Sugar, wherein it is stated that there are two categories of employees, namely, 'regular' and 'seasonal', the 2nd respondent has to be termed as a regular employee as he has been engaged regularly."

[Emphasis supplied]

5. Mr.R.Parthiban, learned counsel for the appellant however assailed the Order of the learned Single Judge pointed out Section 1(3) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, wherein it had been specifically provided that the provisions of the Act shall not apply to an establishment, which is of seasonal character or in which work is performed only intermittently. The learned counsel further pointed out letter No. 1442/MIC 2/98-4 dated 20.07.1998 from the Secretary to Government, Industries (MIC-2) Department, Chennai, wherein, it had been stated that the Sugar Industry being an Agro based Industry, the main function, namely, manufacturing of Sugar is seasonal in nature. The learned counsel therefore stated that the appellant industry was ousted from the application of the Act under question. It was also pointed out by the learned counsel that the second respondent, though working as a Driver, worked only intermittently and therefore, permanent status could not be conferred upon him. The learned counsel relied on the Judgement reported in AIR 1996 SC 332 [Morinda Co-Op Sugar Mills Ltd., Vs. Ram Kishan and Others etc.,] wherein with reference to workmen in a Sugar Mill, the Hon'ble Supreme Court had held that the workmen performing only seasonal work, cannot be said to have been retrenched in view of Clause (bb) of Section 2(oo) of the Industrial Disputes Act 1947.

6. The learned counsel also relied on AIR 1967 SC 161 [M/s. L.H.Sugar Factories and Oil Mills (Pvt.) Limited., Vs. The Workmen] which also related to workmen in a Sugar Industry and which dealt with the aspect of seasonal workers and whether they would be entitled to three days' closure holiday.

7. On the other hand, Mr.K.Dhananjayan, learned counsel for the second respondent/workman submitted that the second respondent had worked continuously for over 240 days in every consecutive calendar year from 2008-2013 and consequently stated that he was entitled for conferment as a permanent worker. The learned counsel also relied upon the Judgement of the Hon'ble Supreme Court reported in 2001 (1) LLJ 1381 [Special Officer and Joint Registrar Co-operative Societies and Another and Workmen of Vanivilas Sugar Factory and Others], wherein an order

declaring an establishment was of seasonal character was set aside by the High Court and also by the Hon'ble Supreme Court on the ground that 338 out of 600 employees were of permanent character. It was urged by the learned counsel that the second respondent, who was working as a driver cannot be termed as having worked only intermittently. The learned counsel urged that the Order of the learned Single Judge did not require any interference.

8. We have carefully considered the arguments advanced.

9. The appellant had not questioned the correctness of the particulars regarding the number of days worked by the second respondent as shown in the tabular column extracted in the Judgement of the learned Single Judge. The second respondent was working as a driver in the appellant Sugar Mill. During the year 2008, he had worked for 241½ days. He had worked for 307½ days during the year 2009, for 309½ days during the year 2010, for 292½ days during the year 2011, for 304 days during year 2012 and for 306 days during the year 2013.

10. Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is as follows:-

"3. Conferment of permanent status to workmen...(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an industrial establishment shall be made permanent.

2."

(Emphasis Supplied)

11. 'Workman' has been defined under Section 2(4) as follows:-

"2(4). "Workman" means any person employed in any industrial establishment 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 (and includes a badli workman],

but does not include any such person,
....

(a) who is employed in the police service or as an officer or other employee of a prison; or

(b) who is employed mainly in managerial or administrative capacity; or

(c) who, being employed in a supervisory capacity, [draws wages exceeding three thousand and five hundred rupees per mensem] or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. "

(Emphasis Supplied)

12. The terminology used in Section 1(3) as well as in the subsequent statutory notification is only borrowed from Section 25A of the Industrial Disputes Act, 1947. Section 25A of the ID Act reads as follows:

Section 25-A: Application of Sections 25-C to 25-E.(1): Sections 25-C to 25-E inclusive shall not apply to industrial establishments to which Chapter V-B applies, or

(a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

13. Similar definition is also adopted in Section 25-K of the I.D. Act for the purpose of applying Chapter V-B of the I.D. Act.

14. Apart from these two enactments, the term seasonal character is also found under the ESI Act. By Amending Act 44 of 1966 which came into force with effect from January 28, 1968,

the definition of 'seasonal factory' has been amended. The definition as amended reads:

"2. (12) 'Seasonal factory' means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year-

(a) in any process of blending, packing or re-packing of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the official Gazette, specify;

The expressions manufacturing process and power shall have the meaning respectively assigned to them in the Factories Act, 1948";

(Emphasis supplied)

15. Even in respect of the Payment of Bonus Act, the question the wages earned during off season by seasonal workers in the name of seasonal allowance can count for the purpose of calculating the Bonus on the wages earned during the accounting year.

16. In the present case, it has not been disputed by the appellant that the second respondent, who was performing duties of a driver was not a workmen. It has also not been disputed that he had worked for 240 days continuously in two successive calendar years. However, the only objection taken is that the provisions of the Act would not apply to an establishment of seasonal character.

17. The learned counsel for the appellant relied on Section 1(3) for this purpose. Section 1(3) is as follows:-

"Section 1(3): It applies to every industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than

fifty workmen were employed on any day of the preceding twelve months. If any question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently the decision of the Government thereon shall be final :

Provided that the Government may, by notification, apply the provisions of this Act to any industrial establishment employing such number of workmen less than fifty as may be specified in the notification."

18. In this connection the learned counsel also relied on the letter No. 1442/MIC 2/98-4 dated 20.07.1998 from the Secretary to Government, Industries (MIC-2) Department, Chennai, in which the relevant portion is as follows:-

"2. The Commissioner of Sugar has stated that the sugar Industry being an Agro based Industry, the main function, namely manufacturing of sugar is seasonal in nature. Moreover the yield and other factors mainly depend on rainfall and crushing operation is not being carried out throughout the year. The pattern of employment of labour in Sugar Mills is classified as regular and seasonal. The regular worker will be given employment throughout the year and the seasonal worker will be given employment only during the period of crushing operation. Hence, opined that sugar Industry is a seasonal industry."

19. The learned counsel therefore stated that since Sugar Industry has been declared as a seasonal Industry, the provisions of the Act would not apply and consequently the second respondent cannot be conferred with permanent status under the provisions of the Act.

20. We disagree.

21. Even in the extract referred above, it had been made clear that two categories of workers are employed in a Sugar Industry, namely, regular workers, who are given employment throughout the year and seasonal workers, who are given employment only during the period of crushing operation. A

driver, who had worked continuously for 241½ days, 307½ days, 309½ days, 292½ days, 304 days and 306½ days successively in the calendar years 2008-2013 cannot be said to have worked intermittently or only during the period of crushing operation. The appellants have extracted work on more than regular basis from the second respondent and cannot turn around and recuse from their obligation to treat him as a permanent workmen.

22. The Judgement reported in AIR 1996 SC 332 [Morinda Co-Op Sugar Mills Ltd., Vs. Ram Kishan and Others etc.,] is not applicable to the facts of this case since the workmen involved in that case worked only during the crushing seasons and on the closure of the season, they ceased to work. It is seen that they worked only from November of a particular year to the succeeding April of the next year. They did not work in the interregnum period. On those facts, their claim that they had been retrenched under Section 2(oo)(bb) of the Industrial Disputes Act 1947 was rejected by the Supreme Court. The other Judgement relied on by the learned counsel for the appellant, namely, AIR 1967 SC 161 [M/s. L.H.Sugar Factories and Oil Mills (Pvt.) Limited., Vs. The Workmen] related to entitlement of workers to three days closure holiday at the end of the crushing season. Again it related only to seasonal workers. The facts in that case are again distinguishable.

23. In 2001 (1) LLJ 1381 [Special Officer and Joint Registrar Co-operative Societies and Another and Workmen of Vanivilas Sugar Factory and Others], relied on by the learned counsel for the second respondent, the Supreme Court had very categorically stated that even in a sugar industry, there were various other activities such as maintenance, marking and accounting and also noted that in that particular Sugar Mill, there were 338 employees of permanent character out of a total of 600 employees. The Supreme Court had actually struck down the Order of the State Government declaring the establishment as one of seasonal character.

24. The ratio laid down in the said Judgment that there is a distinction between workmen on permanent character and workmen of seasonal character has to be borne in mind even if the Industry is of seasonal in nature. There are allied works like maintenance, marketing and accounting, which are carried on throughout the year. Naturally a driver is also required throughout the year. His work does not cease once the crushing season ends. It is continuous as is evident from the tabular column extracted above by the learned Single Judge in his Order.

25. It also transpired during argument that the appellant had actually provided a housing quarters to the second respondent and pending the writ appeal there were disputes raised over payment of arrears of rent. The arrears of rent had

been paid by the second respondent. However, the fact that a housing quarters was allotted also strengthens our view that the work carried out by him was of permanent character since otherwise the appellant Sugar Mill would not have allotted a housing quarters unless they had thought it prudent to have him available at all times to utilise his services as a driver. Indirectly, they had also recognised him holding a post which was of a permanent status.

26. For all the reasons stated above, we find no reason to differ from the view taken by the learned Single Judge and consequently the Writ Appeal fails and accordingly is dismissed. No order as to costs. Connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Joint Director of Industries
Safety and Health
Tiruchirappalli - 620 020.

2. General Secretary
Nehru Sugar Mills
National General Workers' Union
Eraiur, Veppanthattai Taluk
Perambalur District.

+1 CC to Mr.K.Dhananjayan, Advocate sr 57218.

+1 CC to Mr.R.Parthiban, Advocate sr 56713.

W.A.No. 1098 of 2016

And

C.M.P.No. 14210 of 2016

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