

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-17616-2017

Date of decision: 05.02.2020

Batala Cooperative Sugar Mills Limited

.....Petitioner

versus

Presiding Officer, Industrial Tribunal and another

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. Abhiraj Singh Baweja, Advocate for
Mr. H.S. Sirohi, Advocate
for respondent No.2.

GIRISH AGNIHOTRI, J. (Oral)

1. The present writ petition has been filed by the petitioner-Batala Cooperative Sugar Mills Limited, *inter alia* with the prayer to quash the impugned order dated 19.04.2017 (Annexure P-9).
2. Vide order dated 19.04.2017, the Industrial Tribunal, Gurdaspur has dealt with the application under Section 33-C(2) of the Industrial Disputes Act, 1947, filed by the workman.
3. The grievance of the petitioner is that the order passed by the Industrial Tribunal has fallen to error as it has travelled beyond the award. To support this submission, counsel for the petitioner submits that in Para-10 of the award, a specific finding was recorded which is to the following effect:-

“.....Therefore, the perusal of the appointment order Ex.M1 clearly establishes that the workman had been engaged on daily wages basis from August, 1988 to 11th December, 1993 as Turner with notional breaks. It is also relevant to state that engagement of the workman was not necessarily linked with the crushing seasons as his appointment have been made from time to time even during the off seasons. He cannot, therefore, be termed as seasonal workman as it is explicit from the appointment orders. The respondent cannot, therefore, take the refuge of section 2 (oo)(bb) of the Act to dispense with the services of the workman arbitrarily on the basis of non-renewal of the contact especially when he has completed more than 240 days in a calendar year.”

4. The said finding has once again be reiterated in Para-12 while giving findings on Issue No.2 which is to the following effect:-

xxxx xxxx xxxx xxxx xxxx

“12. In the light of my findings on issue No.1, since the termination of services of the workman amounts to retrenchment within the meaning of section 2(oo) (bb) of the Act in flagrant violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, the Labour Court assumed the jurisdiction to adjudicate the question of illegal act of removal. The authorities cited by the Authorised Representative of the respondent as anil Bapurao 1997 (3) RSJ 371 and Jind Coop. Sugar Mills (supra) are not applicable to the facts of the present case inasmuch as it has already been observed that the workman is not a “seasonal workman” in the light of the appointment orders. As such, this issue is decided against the workman.”

5. In view of the above, a short submission of learned counsel for the petitioner is that the Labour Court in its award dated 15.09.1999, had categorically held that the workman had been engaged on daily wage basis as Turner and also that engagement of the workman was not necessarily linked with crushing issues and thus he cannot therefore be termed as seasonal workman, as it is explicit from the appointment orders.

6. Learned counsel for the petitioner then submits that the award was challenged before this Court in CWP-5269-2000, which was disposed of on 16.07.2001 by passing the following order:-

*In the High Court of Punjab and Haryana at Chandigarh
CWP 5269 of 2000*

M/s Batala Coop. Sugar Mills Ltd.

vs.

Harbans Singh and another

*Present: Mr. Vinod Sharma, Advocate
for the petitioner.*

*Mr. R.S. Sharma, Advocate
for the respondent*

K.S. KUMARAN, J. (Oral)

Heard counsel for the parties.

The workman approached the Labour Court against the order terminating his services. The Labour Court after taking into consideration the material placed before it, set aside the order of termination and directed reinstatement of the workman with continuity of service and 75% back wages from date of demand i.e. 10.01.1994.

The management aggrieved by the said order has approached this court with this petition. It is conceded by both the parties that the workman has now been reinstated. Both sides are agreed that though the workman has been given 75% of the back wages, the same may be modified and the claim of the workman for backwages be limited to 25% of the total back wages. In these circumstances, we modify the award passed by the Labour Court only to this extent and dispose of this writ petition accordingly. The back wages limited to 25% shall be paid to the workman within a period of two months from the date of receipt of certified copy of this order.

*Sd/-K.S. Kumaran
Judge*

*Sd/- J.S. Khehar
Judge*

16.07.2001

7. Thereafter, contempt proceedings were filed which also stood disposed of on 28.02.2003. It is a matter of fact that on 17.09.2004 on attaining the age of superannuation, workman was retired and relieved from the service of the Mill w.e.f. 04.10.2004. However, he moved an

application under Section 33-C(2) on 13.07.2009. The case of counsel for the petitioner is that in the application it was his own case that in the award it has been held by the Labour Court that the applicant-workman is not a seasonal workman.

8. In spite of the above, the Industrial Tribunal in its order dated 19.04.2017, has wrongly presumed and thus proceeded on the basis that the workman had been held to be a seasonal worker. In the order therefore a relief presuming him to be a seasonal worker, has been granted.

9. Learned counsel for the respondent, however, submits that the order dated 19.04.2017, deserves to be upheld as the same has been passed in accordance with law. He submits that the said order has been passed on the application moved by the workman under Section 33-C(2) and therefore the relief granted should be upheld

10. This Court agrees with the contention raised by counsel for the petitioner. For the reasons aforementioned, the order dated 19.04.2017, is set aside. This Court finds that once, there was a specific finding by the Labour Court in its order dated 15.09.1999 (Annexure P-1) that the workman cannot be termed as seasonal workman, the the Executing could not have travelled beyond the award. The said findings have become final and have not been set aside by the Higher Court. Therefore, this Court finds that the Industrial Tribunal has clearly fallen to error in presuming and granting relief under the wrong presumption that the workman was held to be seasonal worker in the award. In this regard, reference can be made to Para-12 of the order dated 19.04.2017, which is to the following effect:-

xxxx xxxx xxxx xxxx xxxx

“12. Once applicant has already been held to be seasonal worker, applicant-workman cannot claim wages applicable to a regular workman and respondents cannot contend that he is to be paid as a daily wagers on D.C. Rates. He is thus held entitled to received arrears of wages as per Wage Board applicable to respondent Sugar Mill in capacity of a seasonal worker. However, there is not an iota evidence on record that applicant workman was entitled to D.A. Interim relief, Medical allowance, House Rent Allowance, Washing Allowance and Uniform Allowance and in that eventuality that part of the claim cannot be accepted.”

11. Writ petition is accordingly allowed and the order dated 19.04.2017 is set aside.

(GIRISH AGNIHOTRI)
JUDGE

05.02.2020

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No