

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

305 (10 cases)

CWP No.18670 of 2003 (O&M)
DATE OF DECISION: 21th JULY, 2022

Bhajan Singh and others

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

2. CWP No.19229 of 2003 (O&M)

Bachan Singh and others

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

3. CWP No.18744 of 2003 (O&M)

Ajit Singh and others

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

4. CWP No.19200 of 2003 (O&M)

Solakhan Masih and others

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

5. CWP No.3553 of 2004 (O&M)

Sukhwinder Singh and others

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

6. CWP No.1799 of 2005 (O&M)

Bahadar Sain

.... Petitioner

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

7. CWP No.3725 of 2004 (O&M)

Balraj Singh and another

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

8. CWP No.3556 of 2004 (O&M)

Raghubir Singh and another

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

9. CWP No.13524 of 2009 (O&M)

Veer Singh

.... Petitioners

Versus

The Batala Cooperative Sugar Mills and another

.... Respondents

10. CWP No.19915 of 2003 (O&M)

Vias Dev and others

.... Petitioners

Versus

Batala Cooperative Sugar Mills and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Anil Chawla, Advocate,
for the petitioners in CWP Nos.18670, 19915, 19200 of
2003 and Nos.3725, 3553 of 2004 and No.1799 of 2005.

None for the petitioners in remaining writ petitions.

None for the respondents.

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RAJBIR SEHRAWAT, J. (Oral)

Counsel has appeared on behalf of the petitioners in CWP Nos. 18670, 19915, 19200 of 2003, Nos.3725, 3553 of 2004 and No.1799 of 2005. There is no representation on behalf of the petitioners in the remaining cases. However, since the matters have been clubbed because of involving similar questions of facts and the similar propositions of law, therefore, by this common order, all the aforementioned writ petitions shall be disposed of. For reference, the facts are being taken from CWP No.18670 of 2003.

The petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ of Certiorari or any other appropriate writ, order or direction for quashing the award dated 31.03.2003 (Annexure P-14) passed by the Labour Court, Gurdaspur, with certain other prayers made in the present petition.

The brief facts, as involved in the present petition, are that the petitioners were seasonal workers in Batala Cooperative Sugar Mills. They had been working as seasonal workman for long durations. The petitioners worked with the respondent-Sugar Mills for the crushing season of the year 1990. However, after the end of season in April, 1991, they were not employed by the respondent-Sugar Mills. The petitioners raised an industrial dispute. The same was referred to the Labour Court. The said reference has been answered against the petitioners. Hence, the present petition(s) have been preferred.

Arguing the case, the counsel for the petitioners in CWP Nos.19915, 18670 and 19200 of 2003, Nos.3725 and 3553 of 2004 and No.1799 of 2005 has submitted that the petitioners had been working for a long time with the respondent-Mills. Therefore, they were entitled to be taken back in service with the start of new season. However, after 01.04.1991, the petitioners were not called for duty in the sugar mills. This is despite the fact that under a separate award, the petitioners were even paid the retaining allowance for off season; being the seasonal employees. Since, the petitioners were not given any notice or retrenchment compensation, therefore, the termination of the petitioners amounted to illegal retrenchment. The counsel for the petitioners has further submitted that as per the certified standing orders, the respondents were required to call all the seasonal employees, who were laid off after the previous crushing season. There is even violation of the certified standing orders. The Labour Court has gone wrong in law in holding that the termination of the employment of the petitioners was not a retrenchment, and it is also wrongly recorded that the petitioners had not completed 240 days of service in twelve calendar months preceding the date of non-employment, i.e. till April, 1991. The award deserves to be set aside and the respondent deserves to be directed to take the petitioners back in service with continuity of service with full back wages.

Although, there is no representation on behalf of the respondent-Mills today and, therefore, this Court is deprived of any assistance from the side of the respondents, however, the stand taken by the respondents is on record and the same is mentioned in the award. As per the stand of the respondents, it is not a case of termination of service

of the petitioners. Rather, it is a case of non-calling them for employment during the next crushing season on account of non-availability of the work. Moreover, after April, 1991, the specific rules were framed by the Registrar Cooperative Societies, Punjab, which laid down the criteria for calling the seasonal employees on work as per the seniority. Some of the petitioners were also called to come on duty as per their seniority, however, they had refused to come on duty by insisting upon the payment of the retaining allowance as a pre condition for their joining the duties. However, since there was no termination order passed qua the petitioners and it was only a case of non-employment in the next crushing season, therefore, the case of the petitioners was covered under Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 (for short, the Act).

Having considered the entire material, the Labour Court has held that the petitioners had not completed 240 days of service in twelve calendar months preceding the alleged date of termination. Therefore, the petitioners were not covered under the protection of the Act. Moreover, since it was a case of non-calling for duty in the next crushing season on account of exigencies of the work, therefore, this would not tantamount to the retrenchment. To this effect, the Labour Court has relied upon the judgment of Hon'ble the Supreme Court rendered in the case of ***Morinda Co-op. Sugar Mills Ltd. Versus Ram Kishan and others etc., 2 1997 (3) RSJ 371.***

Having heard the counsel for the petitioners and having perused the record, this Court does not find any illegality or perversity with the award passed by the Labour Court. It is not even in dispute that; as a matter of fact, the petitioners had not completed 240 days of service

in twelve calendar months preceding the date of alleged termination of the services. Therefore, their alleged termination does not make them entitled to benefits under the Act. The Labour Court has specifically recorded a finding that there is no evidence on file to show that the respondent-Mills had called anyone for duty in the next crushing season by breaking the seniority or that any person junior to the petitioners was called for duty without first giving the chance to the petitioners. Even this proposition has not been disputed by the counsel for the petitioners; by referring to any document placed on record before the Labour Court. Hence, the petitioners have failed to prove that the action of the respondent-Mills in not calling the petitioners for duty was a retrenchment within the terms of the industrial law or that any person junior to them was retained by the respondent-Mills.

Another aspect which deserves to be highlighted is that after framing of the rules by the Registrar Cooperative Societies, Punjab, as per the record, even some of the petitioners were called for duty as per their seniority. However, they had refused to join the duty by making the payment of the retaining allowance as a pre condition for rejoining the duty. This dis-inclination of the petitioners to join the duty despite being called by the respondent-Mills also shows that it is not a retrenchment or illegal termination of service of the petitioners on the part of the respondent-Mills.

Although, the counsel for the petitioners has referred to the subsequent award passed by the Labour Court regarding granting of retaining allowance, however, even if the retaining allowance is granted to the petitioners pursuant to the said award, that would not make any

difference qua the right of the petitioners to be called for duty in the next crushing season, if sufficient work was not available with the respondent-Mills. In any case, the action of the respondents has to be held as legal in view of the law laid by Hon'ble the Supreme Court in the case of ***Morinda Co-op. Sugar Mills Ltd. (supra)***, which has held that non-calling of the seasonal employees in the next crushing season does not tantamount to retrenchment. Moreover, the counsel for the petitioners has failed to point out any provision in the certified standing orders applicable to the respondent-Mills to the effect that the respondent-Mills was bound to call every such seasonal employees at work in the next season as well, who had worked in the previous season, irrespective of availability of the work with the respondent-Mills in the next season. Rather, the standing orders make a provision for non-employment of seasonal employees, if the employer has a reason for the same.

In view of the above, finding no illegality with the award passed by the Labour Court, the present petitions are dismissed.

The pending miscellaneous applications, if any, are also disposed of as such.

21th JULY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes