

CWP-125-2001 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208

CWP-125-2001 (O&M)

Decided on : 19.03.2024

Tarn Taran Cooperative Sugar Mills Ltd.,
Tarn Taran, Distt. Amritsar.

. . . Petitioner(s)

Versus

Satwinder Singh and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rahul Sharma, Advocate
for the petitioner(s).

Mr. Jit Singh, Advocate and
Mr. S.L. Chander Shekhar, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – Tarn Taran Cooperative Sugar Mills Ltd., Tarn Taran (being Management), has filed the present writ petition, for quashing of the award dated 21.02.2000 (Annexure P-1), passed by respondent No.2 – learned Labour Court, Amritsar (in short, ‘learned Labour Court’), whereby, Reference No.10 of 1992, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’), has been answered in favour of respondent No.1 – Satwinder Singh (workman).

2. Pleaded case of the workman (respondent No.1 herein) is that he was appointed as plumber by the Management (petitioner herein) on 18.11.1989, on regular basis, pursuant to an advertisement in the Daily Ajit, Jalandhar, dated 14.11.1989. He was allowed to work as such up till 09th May 1991. His services were excellent and most satisfactory, yet he was orally terminated by the Management on 10.05.1991, without notice, charge-

CWP-125-2001 (O&M)

- 2 -

sheet, inquiry, payment of retrenchment compensation, while his juniors were retained in service. Demand notice dated 03.08.1991 served upon the Management also failed to yield any result.

3. Management filed its written statement and pleaded that appointment of the workman was purely on temporary basis for a period of six months, on the basis of consolidated salary of Rs.1200 per month. He remained out of service from 17.05.1990 to 20.05.1990, 23.10.1990 to 30.10.1990, 28.02.1991 to 06.05.1991. Apart from this, he was pleaded to be absent on different dates in the period from December, 1989 till February, 1991.

It was further pleaded that when services of the workman were no longer required, he was paid off. Even as per the instructions dated 04.07.1990, issued by the Punjab Government, in a meeting of Administrative Secretaries, over staff was required to be terminated. Moreover, post of plumber on which the workman was appointed on temporary basis, was later on abolished vide letter dated 21.05.1991.

4. After examining the evidences and the material available on record, learned Labour Court observed that Management has not disputed the completion of 240 working days in one preceding year to the termination of the workman. Therefore, date of termination of service of the respondent No.1 has been accepted by learned Labour Court as 10th May, 1991. First of all, learned Labour Court has recorded its finding of fact that workman worked incessantly from 17.11.1989 to 09.05.1991. Management witness – Prem Singh (MW1), admitted in his cross-examination that workman rendered more than one year service in the office of the Management.

Therefore, the details of the working period given by the Management in its

written statement are baseless and not backed by any substantive evidence.

Thus, it has been observed that there is violation of provision of Section 25-N of the ID Act. For convenience, provision of law i.e. Section 25-N of the ID Act, is reproduced here-under:-

“25N. Conditions precedent to retrenchment of workmen. — (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force

for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

5. It was further observed that even during the course of proceedings, witness of the Management namely Harmit Singh Bal (MW2), explained that post of plumber has been revised and Management is ready to reinstate the workman with continuity in service, but without back-wages.

6. Further, the stand of the Management that workman was retrenched/paid off on the strength of letter Ex.M5, was disbelieved, because the letter was received in the office of Management on 12th May, 1991, whereas, the workman had been removed from service on 10.05.1991.

Thus, again said stand was not held to be *bona fide*.

7. Lastly, in the relief clause, learned Labour Court held as under:-

“Relief:

18. As a result of discussion and findings on the issue supra, the reference is answered in favour of the workman and against the management who is enjoined upon to reinstate the workman with continuity of service and 50% of back wages from the date of demand notice dated 3rd August, 1991, as indicated in the reference itself. No order as to costs. The workman is directed to report for duty within 30 days of the publication of the award.”

8. While assailing the award, Mr. Rahul Sharma, Advocate, for the petitioner – Management argues that reinstatement of the workman has been ordered on account of violation of provision of law of Section 25-K and 25-N of the ID Act. Both the provisions of law, fall under Chapter VB of the ID Act. For the application of these provisions, firstly, an establishment must not be seasonal in nature i.e. working only intermittently, and secondly, the strength of the workmen should not be less than 100 on an average number of working days for preceding 12 months.

9. By referring the present case, counsel submits that the Sugar Mill has to be termed as a seasonal establishment and although, in the petitioner – Mill more than 200 employees were employed, but the Mill does not fall within the definition of industrial establishment. Therefore, Chapter VB would not be applicable, as defined under Section 25-K of the ID Act itself. Hence, reference itself is not in tune with the provisions of the ID Act. Once, Sugar Mill is claimed to be out of the purview of Chapter VB of the ID Act, it cannot be alleged that there is any violation of Section 25-F or

25-N of the ID Act.

To substantiate its submissions, learned counsel for the petitioner – Management relies upon the judgment of Hon’ble Supreme Court rendered in **Batala Cooperative Sugar Mills Ltd. vs. Sowarn Singh, 2006 AIR (Supreme Court) 56 : Law Finder Doc Id # 86105**, wherein, while deciding the case of Batala Cooperative Sugar Mills Ltd., Hon’ble Apex Court followed the observation passed by it in the **Morinda Cooperative Sugar Mills Ltd. vs. Ram Kishan, (1995)5 SCC 653**. For convenience, relevant paragraph No.8 of this judgment says as under:-

*“8. We find that the High Court's judgment is unsustainable on more than one count. In **Morinda Coop. Sugar Mills Ltd. v. Ram Kishan and Ors., [1995] 5 SCC 653**, it was observed as follows:*

"4. 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.

5. 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

CWP-125-2001 (O&M)

- 7 -

in accordance with seniority and exigency of work." "

10. On perusal of the referred paragraphs and reliance placed by Hon'ble Apex Court, this Court finds that as per the facts and evidences of that particular case i.e. ***Morinda Coop. Sugar Mills's case*** (supra), the workman was not working through out the season, but in crushing season only. Workmen were taken into work for the season and consequent to the closure of the season, they ceased to work.

11. In the case at hand, there is no such evidence available, rather, working of the workman with the petitioner – Management as plumber, is not in any manner connected with any particular season. Therefore, the petitioner is required to highlight some evidence led by the Management before the learned Labour Court, in regard to the nature of work taken from the workman, to reach out to an opinion that such a working is only for a limited period, and to hold that the working of the establishment is for a particular season only. However, there is no denial that no specific declaration or law exist to say that the Sugar Mills are to be construed as a seasonal establishment to take it out of the purview of Chapter VB of the ID Act.

12. Contrary to the submissions addressed by the petitioner – Management, this Court is enlightened with another judgment of the Hon'ble Madras High Court rendered in ***The Special Officer, Salem Co-operative Sugar Mills vs. Deputy Chief Director of Factories, authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981 and other, 2012(3) LLJ 249 : Law Finder Doc Id # 348461.***

13. Besides, Court is also informed that the provisions of the Tamil

Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981, are *pari materia* to the ID Act. Regarding the definition of seasonal establishment/workman, Hon'ble Madras High Court held that without there being any authoritative order by the Government in respect of the Sugar Mills under Section 25-A or Section 25-K of the ID Act, or Section 13 of the Conferment of Permanent Status Act, the Court cannot presume that the Government had gone into said issue and decided it.

14. Broadly speaking, Hon'ble Madras High Court, expressed its view by saying that without there being any statutory declaration/Government notification or declaration or provision of law, by way of mere interpretation or assumption, there cannot be a fixed formula for declaration of an establishment to be a seasonal establishment to relieve/oust it from the duties assigned under Chapter VB of the ID Act. The observation made by the Hon'ble Madras High Court is based upon a short judgment of the Hon'ble Apex Court rendered in **Special Officer and Joint Registrar Co-Operative Societies and another vs. Workmen of Vanivilas Sugar Factory and others, 2001(1) LLJ 1381 : Law Finder Doc Id # 193656.**

15. No other substantial ground is argued by the counsel for the petitioner – Management to call for any interference in the award impugned before this Court, apart from an unsuccessful attempt to cull out petitioner – Sugar Mill out of the purview of Chapter VB of the ID Act.

16. Taking note of the submissions and relying upon the ratio of law, discussed and observed thereupon in **Special Officer and Joint Registrar Co-Operative Societies's case** (supra), this Court holds that there is no illegality in the finding recorded by the learned Labour Court in regard

to the illegal termination of the workman from the service.

However, looking at the circumstances, lapsing of a long time since the industrial dispute was raised and other relevant factors such as; age of respondent No.1 – workman, i.e. 56 years; factum disclosed during arguments that respondent No.1 – workman is bed ridden because of suffering with the ailment of Tuberculosis; and that Mill is already shut down since the year 2006, and process of winding up is going on; this Court deems it appropriate to modify the relief clause.

Admittedly, workman (respondent No.1) worked with the petitioner – Management from 17.11.1989 to 10.05.1991 i.e. approximately 1½ years and an industrial dispute was raised, about 32 years back, which turned into reference No.10 of 1992. Thus, workman has reached to the advance stage of his life i.e. to the age of superannuation. Besides, Sugar Mill is already shut down since the year 2006, and process of winding up is going on. Thus, maintaining the order of reinstatement is not going to help workman in any manner. Moreover, maintaining the award in its entirety by forcing the Management, which also is a business establishment, to reinstate the workman in service after such a long time, would also not be justified.

17. Relying upon the ratio of judgment passed by the Division Bench of this Court (Punjab and Haryana High Court) in *LPA No.1334 of 2009*, titled as, “Deputy General Manager (Telecom), Bharat Sanchar Nigam Limited, Sangrur vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another” decided on **30.01.2014**, and this Court earlier in time in *CWP-10925-2013*, titled as *BCH Electric Limited vs Presiding Officer, Labour Court-II, Faridabad and another* decided on **20.02.2024**, I am of the view that a 32

CWP-125-2001 (O&M)

- 10 -

years old dispute between the parties should be settled, by modifying the relief clause of the award, by directing Management to pay one time full and final lump-sum amount of compensation, to the workman.

18. By noticing the fact that respondent No.1 – workman had worked in the office of the petitioner – Management from 17.11.1989 to 10.05.1991 only i.e. about 1½ years, and the dispute being more than three decades old, this Court deems it appropriate to direct the petitioner – Management to pay a lump-sum amount of Rs.3.50 lakhs as compensation to respondent No.1 – workman, within a period of three months from today i.e. on or before 19.06.2024, failing which, the petitioner – Management would be liable to pay the lump-sum amount of compensation of Rs.3.50 lakhs along with interest @ 6% per annum, from 21.06.2024 onwards.

In view of above, the award dated 12.02.2000 (P-1) is modified to above extent and present writ petition is partly allowed.

Writ petition stands **disposed of**, in the above terms.

Misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

March 19, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~