

CWP-9275-1999 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CWP-9275-1999 (O&M)
Date of Decision: 04.03.2024

M/s Oswal Agro Mills Limited and another

...Petitioner(s)

Versus

The Presiding Officer, Labour Court Jalandhar and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

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

Mr. Manmeet Singh Rana, Advocate for respondent no.2

None for respondent no.3

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed for quashing Labour Court award dated 10.03.1999, Annexure P-10, whereby accepting the reference, the petitioners/management was directed to reinstate the respondent/workman with continuity of service and full back wages.

2. The second respondent/workman (hereinafter referred to as 'workman'), who was working as a seasonal clerk with the petitioners/Sugar Mill (hereinafter referred to as 'management'), was paid-off at close of the crushing season, on 01.06.1992. This was on an understanding that he would be recalled for duty on start of the season in October 1992. The workman,

however, raised a demand by sending notice dated 22.09.1992 under Section 2A of the Industrial Disputes Act, 1947, alleging that his service had been terminated on 01.06.1992. The notice was replied to vide response dated 28.09.1992, Annexure P-2, stating that he had not been terminated by the management as alleged. Instead, being a seasonal employee, he was paid-off from duty with effect from 01.06.1992, and to be recalled at the start of next crushing season. Accordingly, he was advised to withdraw the notice. Later, vide letter dated 17.10.1992, Annexure P-4, the workman was informed by the management regarding start of the crushing season 1992-93 from 22.10.1992, and was asked to report for duty positively by 9:30 a.m. that day. The workman did not join, and was sent another letter dated 29.10.1992 for the purpose; still he did not report for duty. Accordingly, he was issued charge sheet dated 09.11.1992, and an Inquiry Officer was appointed. The charges were proved against him as per report dated 02.01.1993. However, taking a lenient view of the matter, the workman was again asked to join duty, failing which it would be presumed that he had abandoned the job voluntarily. Still the workman did not join the duty.

3. Instead of joining the duty, the workman filed his statement of claim dated 02.03.1993, Annexure P-5, challenging the order dated 01.06.1992. Reply to the same was filed by the management, Annexure P-6. Considering the evidence as well as submissions of learned counsel for the parties, the Labour Court accepted the reference and by treating the workman as a confirmed employee ordered his reinstatement with continuity of service and full back wages, vide impugned award dated 10.03.1999.

4. The only submission made by learned counsel for the management is that the Labour Court award is unsustainable in the light of law laid down by the Supreme Court in *Morinda Cooperative Sugar Mills Limited v. Ram Kishan and others*, (1995) 5 SCC 653, holding that paying-off an employee on closure of the crushing season does not amount to retrenchment under the Industrial Disputes Act, 1947. The workman was not a permanent regular employee of the management, and was working as a seasonal clerk. He was paid-off at the end of the crushing season. On commencement of the season, he failed to report for duty despite due communication and reminder. Ignoring these material facts, the reinstatement of workman has been ordered which is unsustainable being contrary to law.

5. Learned counsel for the workman, on the contrary, contends that the award is well-reasoned and based on proper appreciation of evidence on record. He has referred to a finding recorded by the Labour Court wherein reference to statement as well as admission of Giya Lal, MW-2, has been made, and based upon that it has been held that the workman could not be considered seasonal cane clerk who could have been paid-off. In the face of this admission, the Labour Court was right in concluding that the workman was a confirmed employee of the management and entitled to reinstatement with back wages.

6. Heard.

7. The law on the issue stands settled in *Morinda Cooperative Sugar Mills Limited* case (*supra*), holding that paying-off an employee consequent upon closure of the crushing season does not amount to

retrenchment, and such an employee is not entitled to reinstatement. The relevant paragraph of the judgment reads as under:

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(00) 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 in accordance with seniority and exigency of work.

8. It needs to be seen whether the Labour Court was right in considering the workman as confirmed cane clerk, instead of a seasonal employee who could have been paid-off at the end of crushing season. It is undisputed that there is no documentary evidence to establish that the workman was ever confirmed in service. The finding to that effect has been returned only on the basis of statement by MW-2, Giya Lal, relevant part of the award mentioning the same reads as under:

... Apart from this in his statement Shri Giya Lal MW2 who appeared on behalf of respondent-management as the only single important witness admitted that in Ex. M-7 the workman has been mentioned as seasonal clerk and besides the workman eight others have been referred to as clerk whereas against the

name of Kulwinder Singh seasonal clerk is written. He also admitted that except Manjit Singh against names of other clerks paid off word have not been written. This witness then admitted that the workman was made permanent cane clerk in Jan. 1992. Foregoing disclosures of Giya Lal MW2 also leaves no manner of doubt that the workman was made permanent cane clerk in Jan., 1992 and that being the case in March, 1992 the workman could not be considered to be a seasonal cane clerk whose services could be paid off. So record of respondent-management and admissions made by witnesses very clearly establish on record that the workman no more was seasonal clerk who services could be paid off from w.e.f. 1.6.1992 because his services as cane clerk has been confirmed by competent authority.

9. Reading of the aforesaid statement in totality makes it apparent that no order has been issued by the management confirming the workman in service. The solitary line in the statement by MW-2 admitting that the workman was made permanent cane clerk in January, 1992 is not substantiated by any documentary evidence. Instead, this is contrary to pleaded case of the management as well as the evidence on record, in the form of letters dated 17.10.1992 and 29.10.1992, asking the workman to join duties on commencement of crushing season 1992-93. Besides, an affidavit, dated 20.07.1999, sworn by the Manager of Mill has been placed on record that the workman had joined service in 1979-80 season as a temporary employee. Ever since he worked as seasonal clerk, and was never confirmed/promoted as a regular clerk. These facts have not been disputed by the workman. In view thereof, the finding recorded by the Labour Court treating the workman as confirmed/permanent cane clerk is not sustainable as it is not based on any

evidence. Accordingly, his status remains that of a seasonal clerk who was paid-off at the end of crushing season which does not amount to retrenchment.

10. The petition, accordingly, stands allowed for the reasons recorded above, and the impugned award, dated 10.03.1999, is set aside.

04.03.2024

Payal

(TRIBHUVAN DAHIYA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>