



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

230+231+232+233+234

1.

CWP-17310-2017

Decided on : 23.05.2024
- The Kaithal Co-op. Sugar Mill Ltd.
through its Managing Director, Kaithal

...

Petitioner(s)

Versus

Jitender and another

...

Respondent(s)
2.

CWP-17314-2017
- The Kaithal Co-op. Sugar Mill Ltd.
through its Managing Director, Kaithal

...

Petitioner(s)

Versus

Dilbag and another

...

Respondent(s)
3.

CWP-17315-2017
- The Kaithal Co-op. Sugar Mill Ltd.
through its Managing Director, Kaithal

...

Petitioner(s)

Versus

Sarwan and another

...

Respondent(s)
4.

CWP-17316-2017
- The Kaithal Co-op. Sugar Mill Ltd.
through its Managing Director, Kaithal

...

Petitioner(s)

Versus

Sat Pal and another

...

Respondent(s)
5.

CWP-17320-2017
- The Kaithal Co-op. Sugar Mill Ltd.
through its Managing Director, Kaithal

...

Petitioner(s)

Versus

Subhash and another

...

Respondent(s)



6.

CWP-17374-2017

The Kaithal Co-op. Sugar Mill Ltd.
through its Managing Director, Kaithal

... Petitioner(s)

Versus

Mangat and another

... Respondent(s)

7.

CWP-17376-2017

The Kaithal Co-op. Sugar Mill Ltd.
through its Managing Director, Kaithal

... Petitioner(s)

Versus

Ramesh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rajesh K. Sheoran, Advocate
for the petitioner(s) (in all cases).

Mr. Shailender Singh Gill, Advocate
for respondent No.1 – workmen (in all cases).

SANJAY VASHISTH, J. (Oral)

1. This common order shall dispose of aforementioned writ petitions i.e. CWP-17310-2017, CWP-17314-2017, CWP-17315-2017, CWP-17316-2017, CWP-17320-2017, CWP-17374-2017 AND CWP-17376-2017 filed by the petitioner(s) – the Kaithal Co-op. Sugar Mill Ltd., Kaithal, as the controversy involved in all the aforementioned writ petitions is one and same.

Before proceeding further, it is pertinent to mention here that two sets of award were passed i.e. one dated 31.03.2017, wherein seven references were decided and another award dated 31.05.2017/2018, wherein, ten references were decided. However, the other ten writ petitions filed against the award dated 31.05.2017/2018, have been segregated from the



bunch of present writ petitions for deciding separately.

2. Petitioner – the Kaithal Co-op. Sugar Mill Ltd., Kaithal (Management), has filed the aforementioned writ petitions, for setting aside the award(s) dated 31.03.2017 (Annexure P-7), passed by respondent No.2 – Presiding Officer, Labour Court, Ambala, District Ambala (for brevity, ‘learned Labour Court’).

Vide the common impugned award(s), the Labour Court while accepting the claim petition of the claimant along with other six reference petitions, held that present claimant – Jitender along with other six claimants/workmen were entitled to be reinstated in service with continuity of service along with 50% back-wages from the date of termination which shall be paid by the respondents (Management) within two months from the date of award. It has been further held that in default, arrears of back-wages shall earn 9% interest.

3. The required details of all the cases in regard to the workman/workmen, are reproduced here-below in tabulated form:-

Case No.	Name of the Workmen	Date of Appointment	Date of Termination	Ref. No./ Case ID	Date of Award	Relief Granted
CWP-17310-2017	Jitender	10.02.2008	October 2010	R/58/2016	31.03.2017	Reinstatement with continuity in service along with 50% back-wages.
CWP-17314-2017	Dilabg	01.02.2008	October 2010	R/78/2016	31.03.2017	Reinstatement with continuity in service along with 50% back-wages.
CWP-17315-2017	Sarwan	10.01.2008	October 2010	R/59/2016	31.03.2017	Reinstatement with continuity in service along with 50% back-wages.
CWP-17316-2017	Sat Pal	01.02.2008	October 2010	R/127/2016	31.03.2017	Reinstatement with continuity in service along with 50% back-wages.



CWP-17320-2017	Subhash	01.03.2008	October 2010	R/79/2016	31.03.2017	Reinstatement with continuity in service along with 50% back-wages.
CWP-17374-2017	Mangat	01.04.2008	October 2010	R/81/2016	31.03.2017	Reinstatement with continuity in service along with 50% back-wages.
CWP-17376-2017	Ramesh	01.04.2008	October 2010	R/212/2016	31.03.2017	Reinstatement with continuity in service along with 50% back-wages.

4. The details of aforesaid seven writ petitions, which are to be decided by one common order, have been given here-in-above. Since the facts are in common and as per counsel for the petitioner(s) – Management, all the cases have been decided on one premise i.e. considering the completion of required period of 120 days only.

For the purpose of deciding the aforementioned writ petitions, the facts and other required particulars are being noticed and referred hereafter from CWP-17310-2017, titled as, “The Kaithal Co-op. Sugar Mill Ltd. through its Managing Director, Kaithal vs. Jitender and another”. The decision passed therein would be applicable in all other writ petitions (detailed herein-above) also.

5. Workman – Jitender (respondent No.1 herein) pleaded in the demand notice/claim statement filed before the learned Labour Court, that he was appointed by the petitioner – Management as ‘labourer’ on 10.01.2008 and he uninterruptedly worked up-till October 2010, when his services were abruptly brought to an end in violation of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’). He further pleaded that neither any notice, nor any notice pay or retrenchment compensation was paid to him, despite completing more than 240 days in the year preceding to



the date of termination.

6. In the written statement filed by the Management (petitioner herein), it is pleaded that the workman was not employed on any sanctioned and vacant post, rather, he was employed as a casual labourer against casual work, as per the requirement of the Department. His job was discontinued on completion of such casual work. Besides, Management also pleaded that no further recruitment of any category even on daily wages in the Cooperative Sugar Mill, shall be made without prior approval of the Registrar, Cooperative Societies (RCS). Thus, prayed for dismissal of the claim statement.

7. After filing of the replication by the workman, vide order dated 17.08.2016, following five issues were framed by learned Labour Court:-

- “1. Whether the termination of the services of the workmen is liable to be set aside being wrong, illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of service? OPW
2. Whether the case of the workman is time barred? OPM
3. Whether the workman has concealed the true and material facts from the court? OPM
4. Whether the claim statement is not maintainable in the present form? OPM
5. Relief.”

8. In the evidence, workman himself appeared as WW-1 and tendered his affidavit as well as copies of two awards in case of ‘Sukhbir Singh vs. Sugar Mill’ and another copy of award in case of ‘Naresh Kumar vs. Sugar Mill’ (Ex.W-1 and Ex.W-2), wherein, Management had also taken a plea that workmen are casual labourers.



9. On the other hand, petitioner – Management also examined witness namely; Ajay Kumar Verma as MW-1, who as per the finding recorded by learned Labour Court through impugned award, made observation that the said witness produced by the Management “clearly admitted in his cross-examination that workmen were seasonal workers and they used to work only in the season”. Relevant part of the cross-examination of the Management witness – Ajay Kumar Verma (MW-1) borrowed from paragraph No.11 of the impugned award, is reproduced here-under for reference:-

“Claimants were seasonal employees and were worked in the season only. Our season starts from October continued upto the last of April. It is correct that those who are casual labourer, work in the Mill during the season only and thereafter they work in the Mill farms. They do the work of loading and unloading also.

The said witness further admitted that it is correct that the claimants were not to put their signature in the register to record their presence. Their presence was marked by their head. It is correct that said head was the employee of the Sugar Mill. I do not know the name who was their head in the year 2008, 2009 and 2010.”

10. Mr. Rajesh K. Sheoran, counsel appearing for the petitioner(s) – Management argues that the learned Labour Court has exceeded its jurisdiction and went beyond the pleaded case of the parties. It is nobody’s case that the workmen is covered under Section 25B(2)(b)(ii) of the ID Act, and therefore, requirement of continuous working period of 120 days, considering the workman to be engaged in seasonal work, is not proved.

To substantiate this argument, Mr. Rajesh K. Sheoran, counsel



for the petitioner – Management, refers to the copy of the demand notice appended with the writ petition, wherein, a specific case of the workman is that he was appointed on 10.02.2008 and worked till October 2010, and also completed more than 240 days in one calendar year before his termination. Thus, claimed the complete violation of Section 25-F of the ID Act. In addition, he pleaded that juniors to him (workman) were still retained in service, therefore, his termination is hit by Section 25-G of the ID Act.

11. In reply to the demand notice of the workman, filed by the Management, it is averred that workman worked as a casual labourer as per requirement of the work. Moreover, applicant/workman has worked for less than 240 days and has not worked on any sanctioned/vacant post. He never worked continuously i.e. without any break and his claim is time barred, as the demand notice has been issued at the belated stage/time.

Further, in reply on merits, it is averred by the Management that no recruitment of any category even on daily wage basis, shall be made by the petitioner – Sugar Mill (Management), without prior approval of Registrar, Cooperative Societies, as per letter/memo No.26/75/SMA/267-76, dated 13.05.1996.

12. Mr. Rajesh K. Sheoran, counsel for the petitioner – Management, also refers to the claim statement appended with the writ petition, wherein, the averments taken in the demand notice were reiterated almost absolutely. Additionally, the plea that the principle of “*Last Come, First Go*” was not followed, was highlighted. The written statement filed by the Management, which is also appended with the writ petition reiterates the stand taken by the Management before the learned Labour Court and in response to the demand notice also.



13. While referring to the pleadings, Mr. Rajesh K. Sheoran, counsel for the petitioner – Management, submits that it is nobody's case that the service rendered by the workmen in all the aforementioned seven cases is a seasonal working and therefore, the service period of 120 days would be required, as prescribed under Section 25B(2)(b)(ii) of the ID Act.

Had it been taken at the initial stage i.e. at the time of issuance of demand notice, certainly, the Labour Department could have also applied its mind before referring the industrial dispute to the Labour Court under Section 2-A read with Section 10(1)(C) of the ID Act. Therefore, obviously, learned Labour Court has exceeded its jurisdiction by making a special observation of continuous working of 240 days, which is just on the basis of statement made by the management – witness, that too at the time of cross-examination.

14. He further submits that from the said statement also, it cannot be assumed that in the present case, the proving of the continuous period of 120 days is required. Otherwise also, the deposition of the workman should, be considered beyond the case pleaded by the parties before the learned Tribunal or even before the office of Labour Commissioner. Thus, pleads that the learned Tribunal has committed an error and without dealing with the core issue i.e. raised through the pleadings, it has developed a new case through the impugned award.

15. On the other hand, Mr. Shailender Singh Gill, counsel for respondent No.1 – workmen (in all the cases) submits that the decision has been taken by the learned Labour Court on the basis of the record available before it. It is the Management itself, who did not produce the complete record, and therefore, the adverse inference has been drawn against the



Management and a finding has been recorded *qua* the complete violation of provisions of the ID Act.

16. This Court has also examined the zimni orders passed by learned Labour Court.

On 05.10.2016, workman filed an application for seeking direction to the Management to supply the record. In the said application notice was issued for 10.11.2016 and on that date, reply to the application for production of the record was filed by the Management. Thereafter, case was adjourned for 25.11.2016. Since the Presiding Officer of the Court was on leave, the file was taken on 05.12.2016 and the proceedings were adjourned for 04.01.2017. Thus, this Court finds that there is no specific direction for summoning of the record.

In the application moved by workman for producing the record moved by the workman, the record asked for its production, is highlighted here-under:-

“2. That the management may kindly be directed to produce the following record:-

- a) Salary/Payment of Wages Register/Card with respect adhoc/casual/daily wager employee working in the factory/farm house of the Sugar Mills/working for loading/unloading work of Sugar Cane and Sugar etc for the period from 1-1-2008 to 31-12-2010.*
- b) Attendance Register/card in respect of above mentioned employee for the period from 1-1-2008 to 31-12-2010.”*

17. Thereupon, on 24.01.2017, despite there being no specific direction, on being asked by the workman, copies of the record pertaining to page No.1 to 60 of the attendance register, were produced by the



Management – witness. Said details, are in the form of Ex.M-2, available for the period from 01.11.2009 to 30.11.2010 i.e. attendance for the period of the preceding 12 months from the date of termination.

For convenience, said details are reproduced here-under:-

“THE KAITHAL COOPERATIVE SUGAR MILLS LTD., KAITHAL

List of working days of Sh. Jitender s/o Sh. Abhey Ram, Casual Labour in last 12 months prior his last working days.

<u>Month & Year</u>	<u>Days</u>
<u>1.11.2019 to 30.11.2010</u>	
Nov. 2009	Nil
Dec.	Nil
Jan. 2010	15
Feb.	Nil
March	Nil
April	Nil
May	Nil
June	Nil
July	Nil
Aug.	Nil
Sep.	Nil
Oct.	Nil
Nov.	12

Total	27

Note : PF not deducted

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
<i>Time Keeper</i>	<i>Head Time Keeper</i>	<i>Office Supdt.”</i>

18. I have heard counsel for the parties and gone through the pleadings raised in the writ petition(s), and the documents appended thereto, as also examined the record produced by counsel for the parties.

19. On examination of the demand notice, and reply thereto, filed by the Management and the claim statement with reply filed thereto, I am unable to find any pleading of the workmen or even the case of the Management that there is any question requiring its examination under the provisions of Section 25B(2)(b)(ii) of the ID Act. Once, it is a pleaded case



of the workman that he has continuously worked for more than 240 days, it was incumbent upon him/her to prove the said pleaded fact. Once there are details of the working days produced by the Management through Ex.M02, proving that from 01.11.2009 to 30.11.2010 (preceding one year to the termination), workman – Jitender had worked only for 27 days, to counter the said evidence, workman was required to call for the muster roll from the office of the Management.

Moreover, this Court with the help of the counsel for the petitioner – Management, made some efforts to see, if there is any order available on record directing the petitioner – Management to produce the muster roll record/attendance register etc., or other relevant document. There being no such direction in specific presumption against the Management can not be drawn for saying that relevant record has been kept away from the Court.

20. This Court is also surprised to see that on what basis working of 120 days has been made an issue for its adjudication. It is settled proposition of law, as discussed in *Ajnala Co-op. Sugar Mills Ltd. vs. Sukhraj Singh*, *Law Finder Doc Id # 131680*, wherein, relying upon the earlier judgments of the Hon'ble Apex Court including that of *Batala Coop. Sugar Mills vs. Sowaran Singh*, *2006(1) SCT 539*, it has been held that unless the learned Labour Court, specifically deals with the stand of the Management that the workman had not completed 240 days in the preceding one year of his termination, as he was working as a seasonal daily wager, and after the season was over, there was no further engagement, the claim cannot be answered in favour of workman. The observations recorded therein in paragraph No.6 of the judgment, is reproduced here-under:-



“6. *In Batala Coop. Sugar Mills (supra) it was observed as under:*

*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 in accordance with seniority and exigency of work.*

7. Learned Counsel for the appellant is correct that it was for the workman to establish that he had worked for more than 240 days. Learned Counsel for the respondent has referred to certain materials which have been filed as additional documents in this case. These were not part of the records before the Labour Court or the High Court. It appears that the High Court did not examine the issues in the proper perspective as to whether Labour Court did not specifically



deal with the stand of the appellant that the workman had not completed more than 240 days as he was working as a seasonal daily wager and after the season was over there was no engagement.”

21. This Court is of the view that the learned Labour Court had not gone into the issues deeply by calling for the complete record, as sought for or by examining the evidence/material before it, viz-a-viz the pleaded case of the parties, thus, **I deem it appropriate to remit the case to the Labour Court for its re-decision. Accordingly, the common impugned award dated 31.03.2017 (P-5) passed in the aforementioned writ petitions, is set-aside, and learned Labour Court is hereby directed to finally decide all the references once again, preferably, within a period six months from the date of receipt of certified copy of this order.**

The learned Labour Court would provide two effective opportunities to all the parties to lead their evidence, if any. However, it would be entirely upon the parties to produce/lead their respective evidence(s) at their own responsibility.

22. At this stage, counsel for the workmen (respondent No.1 in all cases) informs the Court that in pursuance to the impugned award dated 31.03.2017 (P-7), in all the cases workmen were reinstated, therefore, till the re-decision of the references, they be allowed to continue as such and be not removed, at least till the references are answered again.

23. The factum of reinstatement of the workman in service in compliance to the common impugned award dated 31.03.2017 (P-7), has also been confirmed by counsel for the petitioner – Management. Therefore, it is directed that the workmen, who are already serving, as they were re-



employed in pursuance to the entitlement held by learned Labour Court, would be allowed to stay in service till the re-decision by learned Labour Court.

With the aforementioned terms & directions, writ petition(s) is/are hereby **disposed of**.

(SANJAY VASHISTH)
JUDGE

May 23, 2024
J.Ram

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