

Date of Decision : 04-03-2025

1. CWP-14732-2002 (O&M)

**SONEPAT COOPERATIVE SUGAR MILL LTD, SONEPAT
THROUGH ITS MANAGING DIRECTOR**

.....Petitioner

VERSUS

**THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND ANR.**

.....Respondent(s)

2. CWP-14733-2002 (O&M)

**SONEPAT COOPERATIVE SUGAR MILL LTD, SONEPAT
THROUGH ITS MANAGING DIRECTOR**

.....Petitioner

VERSUS

**THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND ANR.**

.....Respondent(s)

3. CWP-14734-2002 (O&M)

**SONEPAT COOPERATIVE SUGAR MILL LTD, SONEPAT
THROUGH ITS MANAGING DIRECTOR**

.....Petitioner

VERSUS

**THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND ANR.**

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.S Patwalia, Advocate with
Mr. Abhishek Masih, Advocate
for the petitioner in all the cases.

Mr. R.K Malik, Sr. Advocate with
Mr. Ankur Sheoran, Advocate
For the respondents in all the cases.

HARSIMRAN SINGH SETHI, J. (Oral)

1. Present bunch of three writ petitions involve common question of law in the context of common set of facts and thus they are being decided by a common order.

2. In the present bunch of petitions, the challenge is to the award dated 24.07.2002 passed by the Industrial Tribunal-cum-Labour Court, Panipat, copy of which has been appended as Annexure P-8 whereby the order dated 16.09.1994 (Annexure P-4) passed by the authorities reverting the respondent-Workman from the status of regular employee to the daily-wage employee has been treated to be the order of termination and after recording the finding that even after reversion, requisites of Section 25F of the Industrial Disputes Act, 1947 should have been complied with, the benefit of reinstatement to the original post of the Runners Kamdars on permanent basis has been given in favour of the respondent-Workmen along with full backwages.

3. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

4. The respondent-Workmen were working as daily-wage seasonal worker with the petitioners. Apart from the respondent-Workmen, there were other workmen who were also working and were senior but, the three workmen namely Satnarain s/o Ram Singh, Satish Chander s/o Sh. Badhe Ram and Rakesh Kumar s/o Zile Singh were made regular on the recommendation of the Commissioner, which order was challenged before this Court by one Jai Bhagwan s/o Mange Ram by filing Civil Writ Petition

No.3038 of 1994. The said writ petition was disposed of by the Division Bench of this Court vide order dated 07.03.1994 (Annexure P-1) directing that the grievance being raised by Jai Bhagwan qua the bringing all the three respondent-workmen on regular establishment be looked into and an appropriate order be passed.

5. Thereafter, a show cause notice was issued to the respondent-Workmen on 11.05.1994 (Annexure P-2) as to why, the order bringing them on regular establishment be not withdrawn. Reply to the said show cause notice was submitted by the respondent-Workmen and thereafter, even the opportunity of personal hearing was granted. After hearing all the parties, the Managing Director vide order dated 16.09.1994 came to the conclusion that the services of the respondent-Workmen were wrongly brought on regular establishment ignoring the claim of all other employees who were senior and while granting them the benefit of being a regular employee, pick and choose method was adopted without considering the claim of all other eligible employees and no criteria was followed to grant benefit of regularisation to the respondent-Workmen. By the said order, the order issued in favour of the respondent-Workmen dated 04.02.1992 and 25.05.1992 granting them status of regular employee were cancelled and the respondent-Workmen were to be treated on the daily-wage as Runners Kamdars and their seniority in the daily wage cadre was maintained from the date they initially joined as such.

6. It is the case of the petitioners that rather than joining the duties as a daily-wage Runners Kamdars, the respondent-Workmen did not join back and approached this Court by filing CWP No.13946 of 1994, which was dismissed on the ground that the petitioner-Mill does not fall within the

definition of “State” under Article 12 of the Constitution of India and the respondent-Workmen were directed to avail the remedy before the Industrial Tribunal. Ultimately, the issue was raised by the respondent-Workmen vide demand notice dated 09.02.1996 as to whether, the termination of the services of the respondent-Workmen w.e.f 17.09.1994 is valid or not.

6. The Tribunal vide impugned award dated 24.07.2002 has answered the said issue in favour of the respondent-Workmen by recording a finding that the services of the respondent-Workmen were wrongly brought from regular establishment to the daily-wage establishment by reverting them vide order dated 16.09.1994, which amounts to termination and as, the respondent-Workmen had worked for more than 240 days, there was a violation of Section 25F of the Industrial Disputes Act, 1947 and even while passing the order dated 16.09.1994, the departmental proceedings were not held hence, a direction has been given to reinstate the respondent-Workmen as Runner Kamdars in regular establishment from the date of issuance of the demand notice dated 09.02.1996 with full backwages. The said award dated 24.07.2002 is under challenge at the hands of the petitioners.

7. It may be noticed that while issuing the notice of motion, the operation of the impugned award dated 24.07.2002 was stayed.

8. Learned counsel appearing on behalf of the petitioners argues that the Tribunal has misdirected itself in holding that the order of reversion of the respondent-Workmen from regular establishment Runner Kamdars as daily-wage Runner Kamdars has been treated as termination of the services of respondent-Workmen, which is incorrect as, no order was ever passed terminating the service of the respondent-Workmen and rather after their

reversion, respondent-Workmen left the job on their own and they were interested in working as a Runner Kamdars on regular establishment only.

9. Learned counsel for the petitioners submits that the reversion order passed on 16.09.1994 cannot be treated as order passed by way of penalty so as to treat the same as termination order as the said order does not indicate that at any given point of time, the services of the respondent-Workmen were terminated.

10. Learned counsel for the petitioner further submits that by the order dated 16.09.1994, the petitioners were directed to continue as Runner Kamdars on daily-wage basis with the clear indication that their seniority will remain intact from the date of initial appointment as a daily-wage worker.

11. Learned counsel for the petitioner submits that the impugned order passed by the Tribunal is contrary to the facts on record and is perverse hence, the same is liable to be set aside.

12. Learned Senior counsel appearing on behalf of the respondent-Workmen submits that as the seasonal worker only works for 4 months whereas the regular Runner Kamdars works for whole of the year, reverting the respondent-Workmen to daily-wage Runner Kamdar amounts to termination of services hence, the approach of the Labour Court in treating the order dated 16.09.1994 as an order of termination which act would invite paying the retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947, hence granting the relief in favour of the respondent-Workman is perfectly valid and correct hence, the award is liable to be upheld.

13. Learned Senior counsel appearing on behalf of the respondent-Workmen submits that no benefit of continuation in service was given as the respondent-Workmen were never taken back on daily-wage basis, which shows that the order dated 16.09.1994 is actually an order of termination and not reversion.

14. Learned Senior counsel for the respondent-Workmen further submits that though the operation of the impugned award was stayed but no benefit under Section 17-B of 1947 Act has been granted to the respondent-Workmen hence, the present bunch of petitions are liable to be dismissed on this ground.

15. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

16. The first question which needs to be ascertained is whether, at any given point of time, the services of the respondent-Workmen were terminated or not, as being alleged by them.

17. The respondent-Workmen have been treating the order dated 16.09.1994 as an order of reversion terminating their services by interpreting that once, from the regular establishment of the cadre of Runner Kamdars, they were brought on the daily-wage as Runner Kamdars, which work is only available for a period of 4 months in the year, the same amounts to termination.

18. A bare perusal of the order dated 16.09.1994 would show that the said order of reversion has been passed keeping in view the direction given by this Court when one Mr. Jai Bhagwan s/o Mange Ram filed a Writ Petition No.3038 of 1994 raising a grievance qua the action taken by the petitioner in bringing all the three respondent-Workmen on the regular

establishment in the cadre of Runner Kamdars on the ground that he was senior and no criteria was followed by the petitioner-Mill before granting the respondent-Workmen the benefit of regularisation in the cadre of Runner Kamdars. On the basis of the direction given by this Court to look into the said aspect, the Managing Director re-opened the issue and after giving show cause notices to the respondent-Workmen and seeking their reply, an order was passed on 16.09.1994 having endorsement dated 17.09.1994 (Annexure P-4) that the bringing of the respondent-Workmen to a regular establishment in the cadre of Runner Kamdars was incorrect as the claim of the similarly situated employees who were senior to them has been ignored and was without following any criteria. By the said order of reversion, only the orders dated 04.02.1992 and 25.05.1992 by which, the respondent-Workmen were brought on the regular establishment were cancelled. Further, the Managing Director clearly directed that all the respondent-Workmen will continue to work on the daily-wage establishment in the cadre of Runner Kamdars with due seniority from the date of their initial appointment and the three posts which have become vacant to be filled on regular basis, will be filled after following due process.

19. Learned Senior counsel for the respondent-Workmen has not been able to rebut the said order.

20. Once, there is no order of termination but there is only an order of reversion passed by the authority, the Labour Court misdirected itself in treating the said order dated 16.09.1994 to be an order of termination so as to hold the same as contrary to the provisions of the Industrial Disputes Act, 1947 on the ground that while passing the said order of reversion, the retrenchment compensation was not paid to the employees.

21. It may be noticed that no retrenchment compensation is to be paid to an employee who continues to be on a daily-wage establishment as there is no termination of the service rather, only the status of an employee has been changed from regular establishment to a daily-wage establishment in the cadre of Runner Kamdars.

22. That being so, the Tribunal passed an order which was perverse to the facts and evidence which were on record.

23. Further, the argument of the respondent-Workmen which has been accepted by the Tribunal is that once, the daily-wage Runner Kamdar does not perform their duties whole of the year, changing the status of respondent-Workmen from regular to daily wage employees will amount to termination hence, an enquiry should have been held and the retrenchment compensation should have been paid.

24. It may be noticed that the daily-wage worker work according to their terms and conditions. If the nature of their duties is seasonal and they work during the season only and are again asked to continue in the next season, same will not amount to termination. If this argument is accepted then on expiry of a season, it has to be treated that services of seasonal employees is terminated, which is incorrect.

25. The respondent-Workmen were also treated like the other workmen who were on the daily-wage establishment in the cadre of Runner Kamdars. The interpretation being given by the respondent-Workmen that their services have been terminated vide order dated 16.09.1994 having endorsement dated 17.09.1994 (Annexure P-4) is totally incorrect and acceptance of such claim by the Tribunal is also incorrect and the same is

perverse to the facts on record. The order of reversion cannot be treated as an order of termination under any circumstances.

26. Further, the order dated 16.09.1994 which has been set aside by the Tribunal is the same order by which, the respondent-Workmen have been reverted from the regular establishment of Runner Kamdars to that of daily-wage Runner Kamdars and the reason given to set aside the said order by the Tribunal is that no disciplinary proceedings were held.

27. It may be noticed that the disciplinary proceedings are held to prove a misconduct whereas, in the present bunch of petitions, the benefit of regularisation of services given to the respondent-Workmen was sought to be withdrawn and for such procedure, the opportunity of hearing is to be given to the respondent-Workmen, which process was duly followed by the petitioner while passing the order dated 16.09.1994 having endorsement dated 17.09.1994 (Annexure P-4) hence, for reversion, disciplinary proceedings are not to be held and the Rules of Natural Justice were to be followed, which process was followed hence, the Tribunal has erred on this aspect also to treat that the order of reversion should have been passed after holding the disciplinary proceedings.

28. Keeping in view the above, the award dated 24.07.2002 passed by the Labour Court is perverse to the facts and evidence which have been brought on record and cannot be sustained and the same is accordingly set aside.

29. At this stage, learned Senior counsel for the respondents submits that though, the benefit of reinstatement was granted with backwages and the award was stayed by this Court, the respondents were under

obligation to grant the petitioners the benefit under Section 17-B of the Industrial Disputes Act, 1947.

30. It may be noticed that the writ petition was admitted by the Division Bench on 21.03.2005 by passing the following order:-

“We direct as Mr. P.S Patwalia also states that petitioner will pay the wages to the workman in compliance with the provision of Section 17-B of the Industrial Disputes Act within one month from today.”

31. Against the said order, a civil miscellaneous application No.12526 of 2005 was moved by the petitioner for modification of the said order, which application was also disposed of by the Division Bench on 27.01.2006. The factual position reveals that the respondent-Workmen were to be granted benefit under Section 17-B of the Industrial Disputes Act, 1947.

32. It is conceded position that as of now, no benefit under Section 17-B of the Industrial Disputes Act, 1947 has ever been granted to the respondent-Workmen. Though, the award in favour of Workmen is being set aside but the right accrued to the respondent-Workmen to claim the wages under Section 17-B of the Industrial Disputes Act, 1947 cannot be taken away merely on the ground that the impugned award is being set aside.

33. Once, the petitioners were under obligation to grant the respondent-Workmen, the payment under Section 17-B of the Industrial Disputes Act, 1947, though the award is being set aside but, the respondent-Workmen be given the salary under Section 17-B of the Industrial Disputes Act, 1947 from the date of the passing of the award till the date, the

respondent-Workmen attained the age of superannuation or the passing of the present order setting aside the award, whichever is earlier

34. However, the grant of wages will be in accordance with the provisions of Section 17-B of the Industrial Disputes Act, 1947 that the respondent-Workmen will file an appropriate affidavit that they were not gainfully employed, which fact will be ascertained by the petitioner and in case, it is found that the respondent-Workmen were not gainfully employed, the benefit under Section 17-B of the Industrial Disputes Act, 1947 will be released otherwise, due reasons supported by facts will be mentioned by the petitioner for not giving the payment under Section 17-B of the Industrial Disputes Act, 1947.

35. An appropriate order on the grant of wages under Section 17-B of the Industrial Disputes Act, 1947 be passed by the petitioners within a period of eight weeks of the receipt of affidavit to be submitted by the respondent-Workmen qua their claim for wages under Section 17-B of the Industrial Disputes Act, 1947.

36. Present bunch of petitions are allowed in above terms.

37. Pending application, if any, also stands disposed of.

38. Photocopy of this order be placed on the files of other connected cases.

04-03-2025

Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO