

A U.P. STATE SUGAR CORPORATION LTD. NOW M/S.
DOWIALA SUGAR COMPANY LTD. DOIWALA THROUGH
ITS EXECUTIVE DIRECTOR

v.

B NIRAJ KUMAR AND ORS.
(Civil Appeal No. 3002 of 2007)

JULY 31, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

C *Labour Laws – Workman, temporary or seasonal –*
Determination of – Workman engaged as weighment clerk in
mid of the crushing season but not in the next crushing
season though presented himself – Industrial dispute,
challenging illegal termination – Order of courts below that
D *workman was seasonal workman – Direction by High Court*
to engage workman in every crushing reason – Sustainability
of – Held: Not sustainable – Daily rated employees engaged
during the season by Corporation do not automatically
become seasonal workmen – If employee is engaged for work
E *of temporary or casual nature, his engagement would be that*
of temporary workman – Workman did not discharge his
burden that he was engaged as 'seasonal workman' – He
neither worked in the previous full crushing season nor
remained in employment during the whole of the second half
F *of the crushing season for holding lien in the succeeding*
crushing season – Mere working during part of the previous
crushing season does not make him entitled for re-
employment in the succeeding season – Order of High Court
set aside.

G **Appellant Corporation is a seasonal sugar unit. It**
engaged respondent no. 1-workman as weighment
clerks on temporary/daily wage basis in mid of the
crushing season and thereafter, his engagement ceased.
He was not engaged for the next crushing season

though he presented himself. Respondent raised an industrial dispute that his services were illegally terminated. Labour court held that the respondent was a seasonal workman. It directed the appellant to engage the workman in the next season and awarded compensation. High Court modified the award by directing the appellant to engage the respondent in every crushing season. Hence the present appeal.

Allowing the appeals, the Court

HELD: 1.1. It is not that the daily rated employees engaged during the season by the Corporation automatically become seasonal workmen. If an employee is engaged for work of a temporary or casual nature like additional workload during a season, his engagement would be that of a temporary workman. The burden lay on the workman to establish that he was engaged as 'seasonal workman'. There is no material from which it can be held that the workman had discharged his burden. High Court brushed aside the objection raised by the Corporation that respondent no.1 was engaged on temporary basis by observing that the petitioner has not been able to show any perversity in the finding recorded by the labour court. The finding recorded by the labour court that the respondent no. 1 was engaged as a seasonal workman, is based on no legal evidence and High Court was not justified in affirming the said finding. [Para 15] [905-B-E]

1.2. Even if it is assumed that the respondent no. 1 was engaged as a seasonal workman, it is pertinent to notice that before the labour court, it was an admitted position that the crushing season 1996-97 commenced from November 11, 1996 and came to an end on May 3, 1997. The workman was engaged on January 1, 1997 and worked upto April 15, 1997. These admitted facts would amply show that the workman had neither worked in the

- A previous full crushing season nor he remained in employment during the whole of the second half of the crushing season 1996-97. The Standing Orders contemplate lien of a seasonal workman in the succeeding crushing season if he has worked in the
- B previous full crushing season or in the whole second half of that crushing season. It is true that 'second half of the crushing season' is not defined in the Standing Orders but in absence thereof an ordinary meaning of the expression "second half of the crushing season" has to
- C be given and that would mean the crushing season be divided into two parts and later part of the crushing season would be second half of the season. [Para 16] [905-F-H; 906-A-B]

- 1.3. To be entitled for re-employment in the
- D succeeding crushing season, a seasonal workman has to show that he worked in the previous full crushing season or in whole of the second half of the last preceding year. Merely because workman has worked during the part of the previous crushing season, he does
- E not become entitled for re-employment in the succeeding season. In view of the admitted facts, it is concluded that workmen have no right to be re-employed in the succeeding crushing season. High Court was not right in directing the Corporation to engage the workman in
- F every crushing season as and when the purchase centres are opened at mill or at any other place based on that judgment. The judgment of the High Court and the award impugned in the appeals are set aside. [Paras 17, 18 and 19] [906-B-G]

- G *Morinda Cooperative Sugar Mills Limited vs. Ram Kishan* JT 1995 (6) SC 547, Distinguished.

Case Law Reference:

- H JT 1995 (6) SC 547 Distinguished. Para 8

U.P. STATE SUGAR CORPN. NOW DOWIALA SUGAR CO. LTD. 901
DOIWALA THR. ITS EX. DIR. v. NIRAJ KUMAR

CIVIL APPELLATE JURISDICTION : Civil Appeal No. A
3002 of 2007.

From the Judgment & Order dated 22.7.2005 of the High
Court of Uttaranchal at Nainital in Writ Petition No. 1337/(M/S)
of 2001 (Old No. 48853 of 2000).

WITH

C. A. Nos. 4697 of 2006.

C. A. No 3189, 3190, 3191, 3192 of 2007.

Vinay Garg, Deepam Garg for the Appellants.

L.D. Joshi, Anagha S. Desai, Venkateswara Rao Anumolu,
M.K. Michael (N.P.) for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. This group of six appeals by special
leave involving identical issues was heard together and is being
disposed of by a common judgment.

2. In Civil Appeal No. 3002/2007, both the parties are
represented by their counsel and, therefore, we deem it
appropriate to take up the facts from this appeal.

3. The appellants, U.P. State Sugar Corporation Limited,
(for short, "Corporation"), is engaged in manufacture of white
crystal sugar by vaccum process. The sugar Unit is a seasonal
Unit which functions for a period of about 5 months in a year
depending upon the allocation of sugar cane to the concerned
Unit by the Cane Commissioner, U.P.. During the crushing
season 1996-1997, the appellant engaged Niraj Kumar, the
respondent no. 1 (for short, "workman"), purely on temporary/
daily wages basis. According to the Corporation, the workman
was engaged as weighment Clerk as an additional hand in the
mid of the crushing season 1996-97 i.e. from January 1, 1997;
the workman worked upto April 15, 1997 and on and after that

A date, his engagement ceased.

B 4. The workman raised an industrial dispute alleging that by not engaging him in the next crushing season viz., 1997-98, although he presented himself, his services were illegally terminated. He set up the case that he had worked with the Corporation during the crushing season 1996-97 from January 1, 1997 for full second part and was, accordingly, entitled to be engaged in next crushing season and although he presented himself, he was not given any work and, thus, under the Standing Orders his services are deemed to have been illegally terminated.

D 5. The Corporation contested the claim of the workman and set up the case that during the crushing season, the work load in sugar Unit increases manifold which at times necessitates engagement of additional hands on daily wages to cater to the additional workload. During the crushing season 1996-97, sugarcane purchase centres were allotted by the Cane Commissioner which created additional workload and for that additional hands were engaged on daily wages at various centres. The workman was one of such additional hands. He was engaged on January 1, 1997 and worked as such only upto April 15, 1997 whereafter the additional workload for which he was engaged, came to an end and, therefore, his engagement automatically ceased w.e.f. April 15, 1997. The Corporation also stated that the duration of crushing season 1996-97 was from November 19, 1996 until May, 1997. The Corporation denied that there was any illegal termination of services of the workman.

G 6. Both the parties led oral as well as documentary evidence in respect of their respective case. The Presiding Officer, Labour Court, U.P., Dehradun, after hearing the parties passed the award on April 17, 2000 holding that by not engaging the workman in the crushing season 1997-98 which was to start on November 1997, the Corporation can be said to have terminated the services of the workman illegally. The

Labour Court directed the Corporation to engage the workman in the next season and also awarded compensation of Rs. 10,000/- to him.

7. The Corporation challenged the award before the High Court of Uttranchal at Nainital. The principal ground taken by the Corporation before the High Court was, as was the case before the Labour Court, that the workman was a temporary workman as classified under the Standing Orders and, therefore, the direction of the Labour Court was not justified. The workman defended the award before the High Court.

8. The High Court held that there was no perversity in the finding recorded by the Labour Court that the workman was a seasonal workman. However, taking note of a decision of this Court in *Morinda Cooperative Sugar Mills Limited vs. Ram Kishan*¹, the High Court modified the award by directing the Corporation to engage the workman in every crushing season when the purchase centres are opened at mill or at any other place.

9. The Standing Orders incorporating the conditions of employment of workmen in Vaccum Pan Sugar Factories in U.P. define 'Season' thus:

"Season" means the period commencing from the date when the crushing commences till the date when crushing ends. Provided that for these departments which are not in operation when crushing begins and which continue in operation after crushing ends, the "season" so far as it affects the workmen in those departments, shall commence with the date the department commences operation and shall end when the department ceases to be operated."

10. Workmen, in the Standing Orders, are classified in six categories viz. ; (i) Permanent, (ii) Seasonal, (iii) Temporary,

1. Jt. 1995 (6) SC 574.

A (iv) Probationers, (v) Apprentices, and (vi) Substitutes.

11. A seasonal workman is:

“One who is engaged only for the crushing season:

B Provided that if he is a retainer, he shall be liable to be
called on duty at any time in the off-season and if he
refuses to join or does not join, he shall lose his lien as
well as his retaining allowance. However, if he submits a
C satisfactory explanation of his not joining duty, he shall only
loss his retaining allowance for the period of his absence.”

12. Under the Standing Orders, a temporary workman is
one who is engaged for a work of temporary or casual nature
or to fill in a temporary need of extra hands on permanent,
D seasonal or temporary posts.

13. It is pertinent to notice that for a temporary workman,
Standing Orders do not provide for any lien of employment in
the succeeding season based on the employment in the last
preceding season. As regards, seasonal workmen, there are
E special conditions. Clause K(1) of the Standing Orders is
relevant for this purpose which reads thus:

“ K. *Special conditions governing employment of
seasonal workmen-*

F 1. A seasonal workman who has worked or, but for
illness or any other unavoidable cause, would have worked
under a factory during the whole of the second half of the
last preceding season will be employed by the factory in
the current season.

G Explanation – Unauthorised absence during the second
half of the last preceding season of a workman has not
been validly dismissed under these Standing Orders and
of a workman who has been re-employed by the
H management in the current season, shall be deemed to

have been condoned by the management."

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14. The question that falls for our consideration is: whether in the facts noticed above, the workman was engaged as a temporary workman or seasonal workman and whether he is entitled to be re-employed in the succeeding year?

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15. It is not that the daily rated employees engaged during the season by the Corporation automatically become seasonal workmen. If an employee is engaged for work of a temporary or casual nature like additional workload during a season, his engagement would be that of a temporary workman. Having perused the award of the Labour Court carefully, we find it difficult to fathom on what basis the Labour Court recorded the finding that the first respondent was engaged as seasonal workman. The burden lay on the workman to establish that he was engaged as 'seasonal workman'. There is no material from which it can be held that the workman has discharged his burden. The High Court brushed aside the objection raised by the Corporation that respondent no.1 was engaged on temporary basis in one line by observing that the counsel of the petitioner has not been able to show any perversity in the finding recorded by the Labour Court. In our view, the finding recorded by the Labour Court that the respondent No. 1 was engaged as a seasonal workman, is based on no legal evidence and High Court was not justified in affirming the said finding.

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16. Even if we assume that the respondent no. 1 was engaged as a seasonal workman, it is pertinent to notice that before the Labour Court, it was an admitted position that the crushing season 1996-97 commenced from November 11, 1996. That the season came to an end on May 3, 1997 was not disputed. It was also an admitted position before the Labour Court that the workman was engaged on January 1, 1997 and worked upto April 15, 1997. These admitted facts would amply show that the workman had neither worked in the previous full crushing season nor he remained in employment during the whole of the second half of the crushing season 1996-97. The

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- A Standing Orders contemplate lien of a seasonal workman in the succeeding crushing season if he has worked in the previous full crushing season or in the whole second half of that crushing season. It is true that 'second half of the crushing season' is not defined in the Standing Orders but in absence thereof an ordinary meaning of the expression "second half of the crushing season" has to be given and that would mean the crushing season be divided into two parts and later part of the crushing season would be second half of the season.

17. To be entitled for reemployment in the succeeding crushing season, a seasonal workman has to show that he worked in the previous full crushing season or in whole of the second half of the last preceding year. Merely because workman has worked during the part of the previous crushing season, he does not become entitled for re-employment in the succeeding season. If a claim of re-employment is based on engagement in the second half of season, such engagement has to be for full second half of the season i.e. until the end of that season. In view of the admitted facts that have come on record and legal position discussed above, the conclusion is inescapable that workmen in these appeals have no right to be re-employed in the succeeding crushing season. We are, therefore, unable to uphold the decision of the High Court.

18. Before we part with the judgment, we may observe that the decision of this Court in *Morinda Cooperative Sugar Mills Limited*¹ referred to by the High Court in its judgment has no application to the present fact situation and the High Court was not right in directing the Corporation to engage the workman in every crushing season as and when the purchase centres are opened at mill or at any other place based on that judgment.

19. As a result of foregoing discussion, these appeals have to be allowed and are allowed. The judgment of the High Court and the award impugned in the present appeals are set aside. The parties will bear their own costs.