1.
4916/2K

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

CIVIL APPEAL No. 41-K of 2018
On appeal against the Judgment dated 31.05.2018 passed by the High Court of Sindh, Circuit Court Hyderabad in C.P. No. D-334 of 2012

Sanghar Sugar Mills Limited ...Appellant

Versus

...*Respondents*

Sindh Labour Appellate Tribunal and others

For the Appellant	:	Mr. Rafique Ahmed Kalwar, ASC Mr. Ghulam Rasool Mangi, AOR
For Respondent No.3	:	In person
On Court notice		Mr. Khaleeq Ahmed, DAG Mr. Shah Hussain, AAG
Date of Hearing	:	03.06.2025

Judgment

Muhammad Ali Mazhar, J. – This Civil Appeal with leave of the Court is brought to challenge the Judgment dated 31.05.2018 passed by the High Court of Sindh, Circuit Court Hyderabad, in C.P. No.D-334 of 2012, whereby the constitution petition filed by the appellant was dismissed.

2. The ephemeral facts of the case bring to light that the appellant is engaged in the business of sugar manufacturing. Since 1988, the respondent No. 3 was performing his duties in different temporary designations during the crushing seasons. He was initially appointed as a coolie on seasonal duty from 12.10.1988 *vide* appointment letter

dated 19.10.1988. It is further alleged that at the end of the crushing season, the appellant used to issue clearance certificates to temporary employees engaged as seasonal workers and recalled them at the start of the new crushing season; this included the respondent No.3. The appellant also granted an annual increment to the respondent No.3 *vide* Letter dated 22.03.1990, even though he was discharging his duties as a temporary/seasonal employee, which does not qualify him as a permanent workman. With passage of time, the respondent No.3 got appointed as a crystallizer in the chemical department on a seasonal basis. Thereafter, *vide* Letter No.SSM/ADMN/25497, dated 21.03.1997, the respondent No.3 was promoted to Centrifugal Operator as a retainee. Due to financial crunch, the appellant opted for retrenchment, and the respondent No.3 was treated as the last person employed in the category of Centrifugal Operator. Being aggrieved of his termination from service, the respondent No.3 filed a grievance petition in the Labour Court No. VI at Hyderabad under Section 25-A of the Industrial Relations Ordinance, 1969, which was dismissed *vide* Order dated 22.03.2002. The respondent No.3 challenged the order in Appeal before the Labour Appellate Tribunal, which was allowed *vide* judgment dated 26.01.2012, whereby the impugned Order of the Labour Court was set aside and he was reinstated in service. The appellant filed Constitution Petition No.D-334 of 2012 in the High Court of Sindh at Circuit Hyderabad which was also dismissed *vide* the impugned judgement.

3. The leave granting order depicts that at the leave stage, the learned counsel for the appellant argued that the respondent No.3 was employed as Centrifugal Operator in the Sugar Factory as a seasonal worker, who was subsequently relieved from service, but *vide* the impugned judgments, he was ordered to be reinstated and was treated as a regular employee in terms of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("Ordinance 1968"). To strengthen his contention, the learned counsel cited the case of Morinda Co-op Sugar Mills Ltd. Vs. Ram Kishan and others (**AIR 1996 SC 332**), that a seasonal worker cannot claim permanency, which view was also followed in a number of cases including Anil Bapurao Kanase Vs. Krishana Sahakari Sakhar Karkhana Ltd. and another [**(1997) 10**

SCC 599] and Secretary State of Karanataka and others Vs. Umadevi (3) and others [**(2006) 4 SCC-1**]. While granting leave, this Court also suspended the operation of the impugned judgments.

4. The learned counsel for the appellant, at the outset, argued that the appellant is a sugar mill, falling within the definition of a Seasonal Factory under Section 4 of The Factories Act, 1934. According to him, the impugned judgement is rendered in violation of law and is based on a misreading of facts. It was further contended that the learned High Court erred in law in holding that the respondent No.3 falls within the category of "permanent workman" as defined in Standing Order 1 of Ordinance 1968, as he was discharging his duties as a seasonal and temporary workman/worker. It was further contended that the services of the respondent No.3 were only required for the crushing season which lasts for a maximum of 5 months, therefore, neither he could be declared a permanent workman nor was Standing Order 12 applicable in his case. It was further averred that the learned High Court erroneously held that Standing Order 13 of Ordinance 1968, was not properly applied. It was further contended that owing to various reasons, including prevalent government policies, the Appellant suffered losses in the years 1998 and 1990. Hence, to keep the mill going, the appellant had to cut its costs and lay off employees. As far as the grant of annual increment is concerned, the learned counsel argued that it was granted to the various categories of employees working with the appellant including seasonal employees, hence, the respondent No.3, was also given annual increments, but this does not qualify him to be a permanent workman.

5. The respondent No.3, in person, addressed that the nature of his job as a Centrifugal Operator is permanent, as it is an important position in every sugar factory. According to him, he was removed from service without a show cause notice and without being provided any opportunity of hearing. He further argued that he was the only person who was fired by the appellant. In the end, he fully supported the impugned concurrent judgments.

6. Heard the arguments. According to the classification of workman provided in the Standing Order 1 of the Ordinance 1968, a "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation, in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lockout or strike) or involuntary closure of the establishment; and a "temporary workman" is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months. Whereas Standing Order 12 of Ordinance 1968 accentuates that for terminating the employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman and one month's wages calculated on the basis of average wages earned by the workman during the last three months shall be paid in lieu of the notice. Moreover, no temporary workman, whether monthly-rated, weekly-rated, daily-rated or piece-rated, and no probationer or *badli*, shall be entitled to any notice if his services are terminated by the employer, nor shall any such workman be required to give any notice or pay wages in lieu thereof to the employer if he leaves employment on his own accord. However, the services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged, or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken.

7. The procedure for retrenchment is explicated in Standing Order 13 of Ordinance 1968, which delineates that where any workman is to be retrenched and he belongs to a particular category of workmen, the employer shall retrench the workman who is the last person employed in that category. Furthermore, Standing Order 14 germane to re-employment of retrenched workman, contains the rider that where any number of workmen are retrenched and the employer proposes to take into employment any person within a period of one year from the date of such retrenchment, he shall give an opportunity to the retrenched workmen belonging to the category concerned, by sending a notice by

registered post to their last known addresses to offer themselves for reemployment, and they shall have preference over other persons, with each having priority according to the length of his service under the employer. The proviso attached to the Standing Order expounds that in case of a seasonal factory within the meaning of Section 4 of the Factories Act, 1934, a workman who was retrenched in one season and reports for duty within ten days of the resumption of work in the factory in the immediately following season shall be given preference for employment by the employer. It is further provided that in the case of such a seasonal factory, the employer may by sending notice by registered post to the last known address of a workman who was retrenched in one season, requiring him to report on a day specified in the notice, not being earlier than ten days before resumption of work in such factory, and if such workman so reports he shall be given preference for employment and paid full wages from the day he reports.

8. What comes into sight is that the respondent No.3 was initially appointed on seasonal duty as a coolie for Crushing Season in 1988-89, with effect from 12.10.1988, *vide* appointment letter dated 19.10.1988. Later on, he was designated as Crystallizer in the Chemical Department, *vide* letter dated 20.09.1989. Lastly, he was promoted from Crystallizer to Centrifugal Operator (Retainer) *vide* Letter dated 21.03.1997. It is further alleged by the appellant that at the end of Crushing Season 1998-99, the respondent No.3 was issued Retention of Service Letter dated 08.03.1999, but owing to various reasons including prevalent government policies and financial constraints in the years 1998 and 1999, the appellant decided not to retain the services of the respondent No.3 for the upcoming Crushing Season and issued him a termination letter dated 05.05.1999. The judgment of the learned Labour Appellate Tribunal and the learned High Court depict that at both forums, various legal and factual constituents of the case were dilated upon and they rendered concurrent findings after proper consideration and appreciation of controversy. It was never denied by the appellant that the respondent No.3 was performing his duties as a Centrifugal Operator for the last many years in the appellant's enterprise in two segments, i.e. active portion during the crushing season and in the off season, where he was

retained on payment of a portion of his salary to ensure his availability in the next season. Neither was it pleaded before the lower fora that a Centrifugal Operator is not an important assignment or skilled job in a sugar factory, nor was it asserted that without a Centrifugal Operator, the process of converting molasses into crystallized white sugar is achievable.

9. Both the courts below rightly reached the conclusion that the post of a Centrifugal Operator is a permanent feature of a sugar factory, and being a technical/skilled job, the sugar factory needs to retain him even during the off-season time. As such, the respondent No.3 attained the status of permanent workman keeping in mind his total length/tenure of service with the appellant. The arguments advanced by the learned counsel seem mutually destructive to us. On one hand, the plea was taken that the respondent No.3 was retrenched due to financial constraints, being the last person employed in that category, but it was not established that he was in fact the last person employed to the said post. On the other hand, it was argued that due to the end of the crushing season, he was terminated as seasonal worker. However, nothing was said regarding whether, in terms of Standing Order 14 of the Ordinance 1968, any opportunity shall be afforded to for re-employment to the alleged retrenched workman or any preference would be given to him for re-employment over the other persons. Furthermore, no evidence was brought to substantiate the plea of financial crunch. The respondent No.3 was terminated from service without following the procedure provided under Standing Order 12 of the Ordinance 1968. It was also not pleaded that the appellant had wound up or closed down the whole of the establishment and all employees were retrenched/terminated under the provisions of Standing Order 11-A of the Ordinance 1968 with prior permission of the Labour Court. It is difficult to digest, as argued by the learned counsel for the appellant that due to prevailing government policies and financial constraints in year 1998 and 1999, the appellant decided to terminate the services of the respondent No.3. In fact, it resonates from the compendium of facts that the appellant's management was bent upon terminating the service of the respondent No.3 on an unpersuasive and implausible pretext. Each case has to be decided on

its own peculiar facts and circumstances. If the mutually destructive pleas vented by the appellant are cogitated and weighed up in juxtaposition, we have no uncertainty in our mind in holding that the nature of work/skilled job assigned to the respondent No.3 vis-à-vis his continuous length of service for the last several years by whatever name or style (he started his career as with the appellant in the capacity of a coolie, then was promoted/designated with increments to different posts, and finally, a Centrifugal Operator), in all fairness, means that he has attained the status of permanent worker and his termination from service was rightly held to be illegal by the Learned Labour Tribunal and the learned High Court.

10. In the case of Town Administration and another Vs. Mohammad Khalid and others (**2024 SCP 295 = 2024 SCMR 1862**), one of us, speaking for the Bench, held that the letter of appointment and the letter of termination both have much significance in service matters. The terms and conditions of appointment are extremely imperative for regimenting the employment, including the job description, whereas the termination letter expounds explicit reasons for sacking the relationship of employer and employee. Keeping in line with the same code of belief, the Standing Order 2-A of the Ordinance 1968 commands that every workman at the time of his appointment, transfer, or promotion, shall be provided with an order in writing, showing the terms and conditions of his service, and in juxtaposition, Standing Order 12 of the Ordinance 1968 commands that the services of a workman can neither be terminated, nor can a workman be removed, retrenched, discharged, or dismissed from service, except by an order in writing, which shall explicitly state the reason for the action taken.

11. The learned counsel for the appellant relied on the case of Morinda Co-op. Sugar Mills Ltd. Vs. Ram Kishan and others (**AIR 1996 SC 332**). This case is germane to the workers engaged during crushing season in the sugar factory, wherein the Court held the cessation does not amount to retrenchment and the court directed the employer to maintain a register of workmen engaged during the previous seasons and engage them in the new season in accordance with seniority and

exigency of work. While in the case of the Anil Bapurao Kanase Vs. Krishna Sahakari Sakhar Karkhana Ltd. and another (**AIR 1997 SC 2698**), the Court, while relying upon the dictum laid down in the case of Morinda Co-op. (*supra*) held that termination of employees after the end of seasonal work in a sugar factory does not amount to retrenchment; however, the employer is obliged to engage workmen when the season starts in the succeeding years. In our considered view, both the aforesaid judgments of the Supreme Court of India are distinguishable for the reason that before us, the appellant has taken the firm plea that the respondent No.3 was retrenched due to financial constraints and he was the last person employed in that category, so the entire focus was on the plea of retrenchment due to financial crunch which could not be proved, while in the aforesaid dicta, it was held that termination of employees after the culmination of seasonal work in a sugar factory does not amount to retrenchment. As far as the third precedent rendered in the case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others [**(2006) 4 SCC 1**] is concerned, it is related to the phenomenon of "litigious employment", which arises due to issuance of directions by the High Courts or even the Supreme Court. The Court held that merely because an employee had continued service under the cover of an order of the court, under "litigious employment," or had continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

12. In our view, the axiom "litigious employment" represents a set of circumstances where there is an acute probability of legal disputes between employers and employees or where the employees are prone to filing lawsuits or other legal actions against their employer, which may involve different genre of disputes, including wrongful termination, discrimination, harassment, withholding or non-payment of wages, and/or transgression or infringement of the terms and conditions of an employment contract. The third judgment cited by the learned counsel for the appellant, thus, is also distinguishable and does not help him out in the present controversy.

13. As a result of the above discussion, we do not find any illegality, perversity, or impropriety in the impugned judgment passed by the learned High Court. The appeal is dismissed accordingly.

Karachi
03.06.2025
Khalid
Approved for reporting