

## **The Hindustan Lever Ltd. vs Their Workmen on 12 October, 1973**

**Equivalent citations: AIR1974SC769, [1974(28)FLR89], 1974LABLC465, (1974)3SCC514, 1973(5)UJ863(SC), AIR 1974 SUPREME COURT 17, 1974 3 SCC 510, 1974 LAB. I. C. 128, 37 FAC L R 398, 27 FACLR 398, 1974 (1) LABLJ 94, AIR 1974 SUPREME COURT 769, 1974 LAB. I. C. 465, 1974 (1) SCWR 95, 1974 3 SCC 514**

**Bench: P. Jaganmohan Reddy, S.N. Dwivedi**

### **JUDGMENT**

Dwivedi, J.

1. One Kailash Kumar is employed as a Jeep Driver with the appellant in its factory at Ghaziabad. He was employed as a temporary hand some time in 1962. He claimed to be a permanent employee and also demanded the Driver's scale of Rs, 90-5-165 plus dearness allowance. The appellant did not concede his demand. The State Government referred the dispute for adjudication to Labour Court, Meerut. Labour Court has given an award in favour of Kailash Kumar on August 9, 1968. The award directs the appellant to make Kailash Kumar a permanent employee and to give him the scale of Rs. 90 5 165 and dearness allowance admissible to a Permanent employee of the category of drivers with effect from May 6, 1967. This award is questioned by the appellant before us.

2. Counsel for the appellant has made two submissions. The first submission is that the dispute of Kailash Kumar not having been espoused by the appropriate Union of the workmen or a number of workmen of the appellant was not an industrial dispute. The other submission is that the award is wrong on merits.

3. The first submission may shortly be disposed of. It appears that the case of Kailash Kumar was espoused by Hind Mazdoor Sabha, U.P. Branch. The case of the appellant before Labour Court was that the Hind Mazdoor Sabha, U.P. Branch was not competent to espouse the dispute because it has no community of interest with the workmen of the appellant. (See paragraph 3 of the appellant's written statement). The workmen have controverted this plea. According to them, Mazdoor Sabha, U.P. Branch was competent to espouse the dispute. The Hindustan Mazdoor Sabha, a trade union of workmen of the appellant at Ghaziabad, is affiliated to the Hind Mazdoor Sabha. Labour Court framed a specific issue on this question. It is issue No. 2 : "Whether the dispute is an industrial dispute for reasons given in paragraph 3 of the written statement of the employer. The finding on issue No. 2 this : "No evidence was produced by the employer on this issue, nor was it pressed by the learned representative of the employer at the time of argument. This issue, therefore, is decided against the employer." In the face of this finding, it is hardly open to counsel for the appellant to make the first submission before us. The submission is rejected.

4. Coming to merits, the appellant has been manufacturing various products. In 1958 the appellant decided to start agro-industrial operations for the purpose of manufacturing dehydrated vegetable and soups dehydrated peas being the main commodity. With that object, they started in 1959 an experimental pilot plant for dehydrated vegetables at Ghazibad. Kailash, Kumar was employed in this experimental pilot plan in 1962. He was employed as a temporary hand. In 1965 the appellant decided to place the pilot plant on a permanent basis. Accordingly the area supervisors and blocks supervisors were made permanent. No decisions could be taken in regard to Kailash Kumar. It is not disputed by the appellant that the Job in which Kailash Kumar is employed will continue in future for an indefinite period. The abolition of the job is not in contemplation. Conceivably, the job would continue in future for an indefinite period because the plant is now set on a permanent footing. On these facts we agree with Labour Court that the job in which Kailash Kumar is employed is a permanent job. Accordingly, the incumbent of the job should also be permanent.

5. The question now is whether Labour Court's order directing the appellant to make Kailash Kumar permanent on the job is correct. Who should be made permanent is normally the function of the employer. But the appellant has produced no evidence to show that any other temporary employee has a better claim to be confirmed on the post than Kailash Kumar. The appellant has not also shown that the work of Kailash Kumar was not satisfactory or that there were any adverse remarks against him.

6. In its written statement the appellant has pleaded that certain drivers permanently employed in the factory had become surplus. The appellant did not discharge them and they were to be absorbed in permanent vacancies. So Kailash Kumar could not be made permanent. But the appellant has produced no evidence to show as to how many surplus hands there were and who were those surplus hands. The pilot plant was set on a permanent footing in 1959 and the post held by Kailash Kumar became a permanent job then. But no surplus hand has so far been absorbed in the post. Labour Court has doubted that there were any surplus hands to be absorbed. This view of Labour Court could not be and has not been challenged before us. So Kailash Kumar is the only eligible hand for the post. Refusal to confirm has rightly directed the appellant to confirm him on the post.

7. The next question is whether Kailash Kumar should be given the pay scale of Rs. 90-5-165 with proper dearness allowance. The finding of Labour Court is in favour of Kailash Kumar. Admittedly, the scale of pay of drivers in the factory is Rs. 90-5-165. Kailash Kumar drives a jeep and falls in the category of drivers. He is not only driving a jeep in the plant but he also occasionally drives the jeep of the assistant Agricultural Manager. R.D. Rehan, Personnel Manager of the appellant, has admitted that for the last two years or so he has been driving the jeep of the Agricultural Manager. It will thus appear that the activities of Kailash Kumar are not confined only to the plant. He also works as a factory driver whenever called upon to do so. As he falls within the category of drivers, we agree with Labour Court that he is entitled to be placed in the grade of Rs. 90-5-165. He is also entitled to the dearness allowance payable to the permanent drivers of the appellant.

8. We find no force in the appeal and accordingly it is dismissed with costs.