Ashok Kumar and 9 ors. Vs. State Farm Corpn. of India Ltd. and anr.

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Court : Rajasthan

Decided On : Feb-22-1993

Reported in : (1994)ILLJ1217Raj; 1993(2)WLC165

Judge : A.K. Mathur, J.

Acts : Industrial Disputes Act, 1947

Appeal No. : S.B. Civil W.P. Nos. 5602/1991, 3532/1992 etc.

Appellant : Ashok Kumar and 9 ors.

Respondent : State Farm Corpn. of India Ltd. and anr.

Advocate for Def. : R.R. Vyas and; M.S. Vyas, Advs.

Advocate for Pet/Ap. : J.K. Kaushik, Adv.

Judgement :

A.K. Mathur, J.

1. All these writ petitions involve common questions of law and facts. Therefore, they are disposed of by this common order.

2. For the convenient disposal of all these writ petitions, the facts given in the case of Ashok Kumar v. State Farm Corporation of India Ltd. and Anr. (S.B. Writ Petition No. 5602 of 1991) are taken into consideration.

3. The petitioner by this writ petition has prayed that the Instructions dated July 26, 1991 (Annex. 2) issued by the Director-in-Charge may be quashed and the termination of the petitioner's services with effect from October 12, 1991 may also be quashed.

4. The petitioner was an employee of the State Farm Corporation of India Ltd. an undertaking of the Government of India. The petitioner passed his 8th class and belongs to a very poor family. He was employed as daily paid worker on March 8, 1991 in the Central State Farm, Suratgarh. Initially he was engaged only for a period of 24 days i.e. March 8, 1991 to March 31, 1991 and therefter he was engaged from time to time looking to the requirement of the Central State Farm. It is alleged that the respondents have adopted a policy not to allow fresh persons to continue beyond 200 days. It is submitted that the Corporation has how adopted this as a matter of policy that they will not employ daily paid workers beyond 200 days so as to deny them the benefit of the Industrial Disputes Act, 1947 after completion of 240 days. It is alleged that this is an unfair labour practice and it is covered by Fifth Schedule Clauses 5(b)(d) and 10 i.e. to discharge or dismiss workmen by way of victimisation and not in good faith but in the colourable exercise of the employer's right. Therefore, the petitioner has approached this Court by filing the present writ petition and has prayed that the office order issued by the respondents may be quashed and the petitioner may be allowed to continue in service of the respondents.

5. A return has been filed by the respondents and the respondents have joined the issue that the Sate Farm Corporation is not a State within the meaning of Article 12 of the Constitution of India. It is submitted that the Central State Farm is spread over an area of nearly 16,000 acres and the respondents have to engage casual labourers for certain temporary agricultural operations like sowing, budding, harvesting and maintenance of buildings etc. It is also submitted that for these agricultural operations the casual labourers have to be engaged and they are engaged for a specified period for specified work and as soon as the work is over they ceased to be on the rolls of the respondents. In case of the petitioner it is pointed out that his services were immediately discontinued after a particular work on which he was engaged was over. The office order dated June 27, 1991 is a

direction for all the officers concerned to this effect that some of the officers who are deliberately allowing the fresh persons to be engaged beyond 200 days are acting contrary to the Headquarters orders as well as the instructions issued from time to time. Therefore, they should not engage workers beyond 200 days. It is said that this was only to bring this fact to the notice of the subordinate staff to comply with the circular issued by the higher authorities.

6. I shall advert to the main circular dated October 7, 1987 which has been placed on the records as Annex. R. 1 at a later stage.

7. It is submitted that there is a distinction between daily rated employee and a casual worker. The daily rated employee has been defined in Clause 2(c) of the Certified Standing Orders for the employees of the Central Mechanised Farm Employees, Suratgarh. The daily rated employee has been defined as under:

'....Daily rated employees' are those who are employed on daily rates of wages for indefinite periods until they are absorbed in monthly rated regular posts as and whenvacancies arise, subject to their suitability.'

8. It is further submitted that seniority is maintained in the case of regular labourers i.e. those who have completed 240 days service. It is submitted that no seniority list is maintained for casual workers employed on a specified work for a specified period. Therefore, a distinction has been made between the two classes of employees.

9. Mr. Kaushik, learned counsel for the petitioners, has submitted that the aforesaid order amounts to victimisation and unfair labour practice so as to deny the benefits to these labourers on completion of 240 days and consequently the benefits of the Industrial Disputes Act, 1947. Learned counsel in support thereof has invited my attention to H.D. Singh v. Reserve Bank of India and Ors. ((1985) 4 S.C.C. 201).

10. As against this, Mr. Vyas, learned counsel appearing for the respondents, has submitted that the Central State Farm is engaged in agricultural operations and the petitioner and other like persons are only engaged for a particular operation

and after the operation is over they are disengaged. There is no unfair labour practice in such situation.

11. I have heard the learned counsel and considered the matter at length.

12. The office order dated June 27, 1991 is purely an administrative office order, which has been issued by the Director-in-Charge in pursuance of the instructions issued by the Chief Administrative Officer on October 7, 1987. It is an inter-departmental correspondence and it has been mentioned therein that some of the officers are not paying attention to the labour laws and on account of this labour cases have been on increase. Therefore, in order to avoid this kind of litigation, certain guidelines have been given. In that the guideline No. 1 which according to the petitioner amounts to victimisation and unfair labour practice reads as under:

'1. New entry to labourers should be avoided. In case engagement of a new worker is inevitable, it should be seen that work is arranged in such a way that he is not put to 60 days work in a period of 90 days and 240 days work in a period of one year.'

13. It is true that a reading of this guideline gives an impression that the authorities have been instructed not to engage labourers beyond 240 days so as to entitle them the benefit of the Industrial Disputes Act, 1947. But at the same time I cannot lose sight of the fact that the nature of the job involved in the present Farm is seasonal. As explained by the respondents in their reply, they are engaged basically in agricultural operations i.e. sowing, budding and harvesting etc. of the crop. Therefore, such operations are not such in which the incumbent is to be necessarily kept for 240 days. These are the temporary operations and engagement of such labourers is also for a particular seasonal crop. Therefore, it cannot be said that for such nature of work the respondents should necessarily engage the casual labourers and permit them to continue for more than 240 days. The nature of the job and the operations involved themselves show that these are job oriented engagements and the moment the job is over such persons are discharged. Therefore, keeping in view this back-ground we have to appreciate the office order as well as the circular issued by the Headquarters on October 7, 1987. In fact, it appears that some unfair labour practices might have been increased by

the subordinate officers by somehow continuing such workers beyond 240 days so as to benefit such persons and saddle the Corporation with the liability. Therefore, in that back-ground the circulars were issued and it was emphasised to these offices that they must strictly adhere to the labour laws. In the circular dated October 7, 1987, it has also been mentioned in clause 7 that those workers who have completed 240 days if they are retrenched then the procedure laid down in the Industrial Disputes Act should be followed and in cases where retrenchment is contemplated the principle of 'last come first go' should be kept in view. Therefore, it cannot necessarily be said that this circular and the office order tantamount to unfair labour practice.

14. Mr. Kaushik, learned counsel for the petitioners, submitted that the respondents are having vacancies still they have not permitted the petitioners to continue in service, otherwise they would have completed 240 days. So far as the existence of vacancies is concerned, in view of the reply filed by the respondents that vacancies do exist because of the agricultural requirements, therefore, simply because the Corporation is having vacancies that does not necessarily mean that the Corporation should engage the petitioners. If the Corporation does not have any work to be done then simply because there are vacancies and they are not being filled in, that does not amount to unfair labour practice.

15. H.D. Singh's case (supra) was a case of an employee of the Bank whose services were sought to be terminated. In that context, Their Lordships of the Supreme Court held that it was not expected of the Reserve Bank of India to indulge in methods amounting to unfair labour practice. Here, we are concerned with the agricultural operations which are peculiar in its nature and such agricultural engagements are made looking to the nature of the crop and their sowing, budding and harvesting etc. This job work goes with season to season and it is not expected of the Corporation to keep permanent staff for such agricultural operations. It is known practice that in agricultural farms the labourers are engaged by the private farms owners also for particular job only and simply because the present Farm happens to be a Central Government undertaking the position cannot be said to be worse. They are also engaged in agricultural operations and they also follow the same practice of engaging the labourers for

sowing, budding and harvesting etc, of the crop. Therefore, the circular and the office order, in my opinion, does not amount to unfair labour practice or victimisation. But at the same time I would like to caution that the authorities should not take resort under the office order and the circular to suppress the genuine cases where the labourer is engaged for a job other than the job of agricultural operations like Mechanic or other Operators or official staff who can legitimately be retained in the office and his services are being terminated so as to prevent him from completing 240 days and deny him the benefits of the Industrial Disputes Act. Such individual matters can fall in the category of unfair labour practice. Therefore, a proper distinction has to be drawn between these two, namely, labourers who are engaged only for agricultural operations and labourers who are engaged in the office. Such individual cases in which there is vacancy and employee is not engaged as daily rated employee for doing agricultural operations then such employee can always raise an industrial dispute before the competent labour court for redressal of his grievance.

16. In the result, all these writ petitions are disposed of in the light of the observations made above.