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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SINGLE BENCH

GYANENDRA PAL SINGH AND OTHERS — Appellant

Vs.

CANE COMMISSIONER AND OTHERS — Respondent

(Before : Narayan Shukla, J)

Writ Petition No. 3355 of 2009

Decided on : 29-05-2009

- Uttar Pradesh Co-operative Societies Act, 1965 - Section 121, Section 122

A. Service Law — Seasonal Clerks — Termination of service — Crushing season — Illegal stoppage of service in mid-crushing season — Petitioners, permanent Seasonal Clerks, subjected to illegal stoppage of service in contravention of Supreme Court order in U.P. Cane Union Employees Federation Ltd. v. Cane Commissioner — Supreme Court mandate dictates continuation of service till 15th July, 2009 for the 2008-09 crushing season — Impugned order of 6.2.2009 is a direct violation of this ruling. (Paras 1, 2)

B. Statutory Interpretation — U.P. Co-operative Societies Act, 1965 — Sections 121, 122 — U.P. Cane Cooperative Service Regulations, 1975 — Amendment of Regulations — Scope of Registrar's power — Regulations framed under Section 122 cannot be amended under Section 121 — Registrar's mala fide intention to circumvent mandatory State Government approval — Impugned order dated 6.2.2009, amending "crushing season" definition, is illegal, arbitrary, and without jurisdiction. (Paras 3, 4)

C. Statutory Interpretation — U.P. Sugar Cane (Supply and Purchase) Act, 1953 — Section 2(1) — Definition of "crushing season" — Amendment of

definition — Original definition "1st October to 15th July" — Amended definition "commencement of crushing till end of crushing" — Amendments to definitions found to be arbitrary and illegal, contravening existing statutes and regulations. (Para 5)

D. Pleadings — No counter affidavit — Grounds in writ petition taken as correct — In the absence of a counter-affidavit, the grounds presented in the writ petition are deemed accurate, as per precedents in *Choksi Tube Company Limited v. Union of India* and *Naseem Bano v. State of U.P.* and others. (Para 6)

E. Writ Petition — Quashing of order — Continuation of service — The writ petition is allowed, and the impugned order dated 6.2.2009 is quashed, enabling petitioners' continuation in service for the 2008-09 crushing season (till 15th July, 2009) as per the statutory definition. (Para 7)

Counsel for Appearing Parties

Uttam Kumar Verma, for the Appellant; Madhu Singh, for the Respondent

Final Result : Allowed

JUDGMENT

Shri Narayan Shukla, J.—Heard Mr. Uttam Kumar Verma, learned Counsel for the petitioners and Mrs. Madhu Singh, learned Counsel for opposite parties 2 to 4 as well as learned Standing Counsel.

The petitioners were permanent Seasonal Clerks in the office of the Respondents and their services have been illegally stopped in mid-crushing season which is in violation of the order passed by the Apex Court in Civil Appeal No. 2727 of 2008, *U.P. Cane Union Employees Federation Ltd. v. Cane Commissioner & R.C.C.S.* and others.

2. It is contended that the petitioners are entitled to continue in service till 15th of July, 2009 for the crushing season 2008-09 in view of the judgment rendered by the Apex Court in Civil Appeal No. 2727 of 2008, *U.P. Cane Union Employees Federation Ltd. v. Cane Commissioner & R.C.C.S.* and others and that the impugned order dated 6.2.2009 passed by the opposite party No. 1 is in the teeth of the judgment of the Apex Court.

3. Learned Counsel for the petitioners further submits that the *U.P. Cane Cooperative Service Regulations, 1975* have been framed u/s 122 of the *U.P. Co-operative Societies Act, 1965*, which came into force after its publication in extraordinary Gazette dated 18th of October, 1975 whereas the impugned order has been passed in exercise of powers purported to have been conferred u/s 121 of the *U.P. Co-operative Societies Act, 1965* and

that since Regulation, 1975 has been framed u/s 122, the same cannot be amended in exercise of power u/s 121 of the Act, 1965.

4. He also submits that the Registrar has passed the impugned order u/s 121 of the Act with mala fide intention only to circumvent the mandatory approval of the State Government u/s 121 under which Regulation, 1975 has been framed and that the impugned order dated 6.2.2009 amending the definition of crushing season is illegal, arbitrary and without jurisdiction.

5. It appears from the record that the impugned order dated 6.2.2009 has been passed on the basis of some amendments made by Respondent No. 1 in the definition of the crushing season. Section 2(1) of the U.P. Sugar Cane (Supply and Purchase) Act, 1953 provides that "crushing season" means the period beginning on 1st October in any year and ending the 15th of July next following. This definition has been amended as "crushing season" means the period commencing from the date when the crushing of sugar cane in concerned sugar factories commence till the date when crushing ends.

6. Since no counter affidavit has been filed till date, the grounds taken in the writ petition are taken to be correct in view of the decisions rendered in *Choksi Tube Company Limited v. Union of India* (1997) 2 SCC 179, *Na seem Bano v. State of U.P.* and others 2.

7. Under the circumstances, the writ petition is allowed and the impugned order dated 6.2.2009 is quashed. The petitioners are allowed to continue during the crushing season 2008-09 i.e. till 15th of July, 2009 as per definition given above in the Act and Regulations also.

No order as to costs.