

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4752/2004

(From the judgement and order dated 22/10/2003 in CMWP No. 43139/1997 of
The HIGH COURT OF JUDICATURE AT ALLAHABAD)

M/S. KRISHI UTPADAN MANDI SAMITI, AGRA

Petitioner(s)

VERSUS

VIMAL KUMAR SHARMA

Respondent(s)

(For final disposal)

Date: 15/09/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Petitioner(s)

Mr. Pradeep Misra,Adv.

For Respondent(s)

Mr. Rajiv Mehta,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

r as to costs. We, The appeal is partly allowed with no order
on on however, direct the Samiti to reinstate the respondent-workman as pe
shall be daily wages, which position he was holding on 30.9.1986. This order
ay. However, the carried out within a period of four weeks from tod
ordingly, this appeal respondent would not be entitled to back wages. Acc
shall stand disposed of.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2006
(Arising out of S.L.P.(C) NO. 4752 of 2004)

M/s. KRISHI UTPADAN
MANDI SAMITI, AGRA

.. APPELLANT

vs.

VIMAL KUMAR SHARMA

.. RESPONDENT

O R D E R

Leave granted.

In the present case the Management Krishi Utpadan
Mandi Samiti, Agra has come in appeal by grant of special leave
against the decision of the High Court dated 22.10.2003 in
C.M.W.P.No. 43139/1997 by which the High Court has upheld
in substance the Award of the Labour Court but has slightly

modified it stating that the workman shall be entitled to 50% wages from the date of termination till the date of the Award i.e. 19.12.1996.

The facts giving rise to the Civil Appeal are as follows:

Respondent was appointed on 29.1.1985 as a Barrier Puller/peon by the Mandi Samiti on daily wages. His services were terminated on 1.10.1986 as a daily wager. In

-2-

1993 respondent went in for conciliation. The said conciliation failed. It resulted in the Government making a reference under U.P. Industrial Disputes Act on 10.10.1994.

The Labour Court came to the conclusion in the reference that the workman had worked for 240 days as a peon and his services have been retrenched without complying with the provisions of the Act. Accordingly, he was ordered to be reinstated with full back wages. Aggrieved by the Award of the Tribunal the matter was moved by a writ petition before the Division Bench of the High Court which has passed the impugned order.

Having gone through the records of the case and the evidence it is clear that the respondent-workman had worked as a daily wager peon during the period January 1985 till 30th September 1986. His services were terminated on 1st October 1986. This is borne out by the evidence of Shri Gayalal who was examined on behalf of the Management (see page 30 of the SLP paperbook). Shri Gayalala has further deposed that although payment was made to the workman as per the register and although the register was maintained by Mandi Samiti, the same was not filed before the Court. In short, the relevant record was not produced before the Court by the Management.

Following the judgment of this Court in the case of R.M.Yellatti vs. Assistant Executive Engineer Judgment Today 2006 (9) SC 340 we are of the view that the Management has

failed to produce the relevant record and in the circumstances the workman was entitled to be reinstated, as a daily wager, as a peon on the muster roll on 30.9.1986. He will be notionally deemed to be in service as on 30.9.1986 for the purpose of his seniority.

As far as the back wages are concerned, we have examined the record. We find that the services of respondent-workman stood terminated on 1.10.1986. He moved for conciliation only in 1993. There is no evidence whatsoever on record to show the income which he earned during the period 1.10.1986 up to 1993 and in the circumstances he is not entitled to any back wages.

Subject to above this appeal is partly allowed with no order as to costs. We, however, direct the Samiti to reinstate the respondent-workman as a peon on daily wages, which position he was holding on 30.9.1986. This order shall be carried out within a period of four weeks from today. However, the respondent would not be entitled to back wages. Accordingly, this appeal shall stand disposed of.

.....J.

(S.H.KAPADIA)

.....J.

(R.V. RAVEENDRAN)

NEW DELHI;

SEPTEMBER 15, 2006.