rules treat it differently from the payment of instalments. Rule 13 permits the Estate Officer to grant extension of six months in making the deposit. For that delay, only interest @ 6% is charged. In the present case, the delay was a little more than six months. However, a penalty of 100% has been imposed. We find that the action is absolutely arbitrary.

(11) It is true that Regulation 13 confers discretion on the authority. But the power cannot be exercised arbitrarily. It is not unbridled. Each order must indicate reasons. It must be reasonable, just and fair. Otherwise, the court shall have to intervene to annul the action. The order, in the present case is, wholly arbitrary.

(12) Resultantly, we quash the order of the respondents in imposing a penalty of 100%. In the circumstances of the case, we are satisfied that a penalty of 20% would have met the ends of justice. Consequently, the petitioners are held liable to pay a penalty of 20%. They have already made a deposit of 50% of the amount of penalty. The excess amount shall be refunded to the petitioners immediately within one week from the date of receipt of a copy of this order. In case of failure to refund the amount within the above-mentioned period, the petitioners would be entitled to the amount alongwith interest @ 10% from the date of deposit till the date of refund. The interest shall be payable by the officer responsible for the delay.

(13) The writ petition is, accordingly, disposed of. In the circumstances, there will be no order as to costs.

R.N.R.

Before S.S. Sudhalkar, J

NARAINGARH SUGAR MILLS LTD., WORKERS UNION (REGD.)—*Petitioner*

versus

THE STATE OF HARYANA & OTHERS—*Respondents*

C.W.P. No. 7492 of 2000

5th April, 2001

Constitution of India, 1950—Art. 226—Dispute between the workers Union and the Management—Questions of fact—Writ jurisdiction—Without leading of evidence questions of fact cannot be

decided—Proper remedy to decide disputed questions of fact is upon a reference under the Industrial Disputes Act—Writ dismissed.

Held,that for deciding the contested question of fact, the writ petition will not be a proper remedy. It is a question of evidence to be led, considered and discussed. Leading of evidence will include, examination-in-chief and cross-examination also. Without leading of evidence, the contested question of fact cannot be decided. The proper remedy, therefore, would be only under the Industrial Disputes Act and not by filing the writ petition. Even if the writ petition is held to be maintainable, necessary relief cannot be granted because the disputed questions of fact cannot be decided in this writ petition.

(Paras 9, 10 & 11)

A.K. Gupta, Advocate, for the Petitioner.

Rattan Singh, AAG Haryana for Respondent No. 1

P.K. Mutneja, Advocate for Respondent No. 2

JUDGMENT

S.S. Sudhalkar, J

(1) This writ petition is filed by the workers Union of a Sugar Mill. The petitioners have filed a list and particulars of workmen at Annexure P/2. The workmen had submitted a Charter of demands to the management—respondent No. 2, but it paid no heed. This started unrest. The petitioner-Union firstly resorted to the Dharna and then to a strike. FIR was lodged against some of the workmen viz.-Ashwani Kaushik, Ajay Kumar Sharma, Yash Pal and Sanjay Kumar Sharma, however, no challan has been filed against them. The administration and the Labour department intervened and an agreement was arrived at on 3rd December, 1999. Copy of the agreement/settlement is at Annexure P/3. By the said agreement, it was agreed as under :—

"(i). That to maintain the industrial peace the workmen will bring to an end the hunger strike.

(ii) As soon as the season of 1999-2000 would begun the management would take on duty all the workmen who were working in the previous season. The workers who raised slogans against the management during the strike and who

abused the management they would beg pardon in writing from the management and then they would be taken on duty. The workers against whom the FIR is lodged they would not be taken on duty and they would be allowed to join duties as per the atmosphere.

(iii) The workers would be allowed to join duties as per their category.

(iv) In future the workers would be given the appointment letter as per their category.

(v) A committee of four persons would be constituted in which two members from each side would be appointed. This committee would prepare the seniority list as per their category which will be acceptable to both the parties.

(vi) The management would initiate the recommendations of Sugar Wage Board and this process would be completed within a period of three years. Besides this it is also settled that no worker would be paid less than the minimum wages. All the workmen would be allowed the holidays as per the Holiday Act of 1965. Such as National holidays, festival holidays, casual holidays and this will include the weekly holiday also.

In the end the workers have assured that they would also help in the full production maintaining the discipline and the management would not resort any sort of biased attitude towards any worker due to the said strike."

(2) It is the contention of the petitioners that because of the agreement, the workmen brought an end to the strike. It is contended that as per clause (ii) of the settlement, as soon as the season of cane crushing began, they should have been allowed to resume the duties and according to clause (iii) of the agreement, they would be appointed category-wise. However, the management did not abide by the agreement and is whiling over the time. It is contended that as per the Standing orders, the position of the workmen is maximum that of the suspended employees, and they are entitled to subsistence allowances and even if it is assumed (though not admitted) that some enquiry or trial is pending against them, the FIR was only against a few of the workmen.

(3) It is further contended that the Union represented to the Labour Commissioner on 31st March, 2000 for enforcement of

agreement, but nothing was heard. On 1st May, 2000, the Management gave an evasive reply to the Union and according to it, it is not interesting in solving the problem of workmen and is not willing to enforce the agreement and is not allowing them to resume their duties.

(4) The respondent-management in its written statement has contended that the Sugar Industry, in which the respondent is dealing is a seasonal industry and the season runs approximately from the month of November to April every year and in the period of six months, only a skeleton staff remains. In view of this position, there is a classification of workers in the Standing orders, which is as under :—

1. Permanent
2. Probationer
3. Temporary
4. Apprentice
5. Casual
6. Badli or substitute
7. Seasonal employee

(5) It is furhter contended that when the petitioner-Union took up cudgels on behalf of 281 workmen, mentioned in the list Annexure P/2, it was not specified as to in what capacity they were working and that there is a deliberate attempt to include those persons for the various reliefs under the Industrial Disputes Act (hereinafter referred to as "the Act") on the vague statement that those workers had worked for more than 240 days. It is further contended that no details have been given and only the dates of alleged payment and dates on which they were allegedly not allowed to work, have been given and even the dates are wrong. It is further stated that the respondent had no record of all the workers mentioned in the list Annexure P/2 other than the workers at Sr. No. 1 to 4, 19, 23, 27, 28, 30, 32, 33, 35, 64, 72, 78, 79, 110, 112 to 115, 124, 130, 155, 157and 230.

(6) It is further contended that the petitioners are relying on the settlement dated 3rd December, 1999 and as per condition No. 2 of the settlement, only those workers who had worked in the last/preceding season, were to be considered. The respondents insisted upon the said condition to ensure that only genuine workers are employed and to foil the attempts of the petitioner-Union to impose outsiders masquerading as workers.

(7) It is further contended that it was the belief of the respondent that a number of persons who had never worked in the mill were trying to get employment by the said method and that this belief was found to be correct after seeing the list, Annexure P/2, wherein most of the persons were not the employees of the respondent. It is further contended that they did not approach the Mill for work. On the contrary, they tried to force the District authorities to ensure that they got the employment. It is further contended that as per the settlement, all the workers of last season would be taken on work and the workmen who had indulged into slogan shouting and abuses would apologise to the management in writing. Regarding workers against whom FIR was filed, they would not be taken on work and would be taken up only as per the circumstances.

(8) It is further contended that in pursuance to the settlement, the respondent-management put notices on the notice board stating the workers to report for duty. Copy of the notices are at Annexures R/2-10 and R/2-11. Letter was also sent to the Labour Commissioner on 7th December, 1999, explaining the position that none of the workers had reported for duty. It is further contended that the workers never came to the Mill for joining duty but continued to represent in numbers before the Sub-Divisional Magistrate.

(9) After hearing the learned counsel for the parties, the question that arises is whether in this writ petition, this Court can grant reliefs to the petitioner as claimed for. Except for the workmen in the list Annexure P/2, whose names have been admitted as mentioned above, the respondent-management has not admitted that they were their workmen. So there is a dispute of fact as to whether rest of the persons mentioned in the list were actually workmen of the respondent or not. For deciding this contested question of fact, the writ petition will not be a proper remedy. It is a question of evidence to be led, considered and discussed. Leading of evidence will, include, examination-in-chief (affidavit/s), and cross-examination also. Without leading of evidence, this contested question of fact cannot be decided.

(10) Regarding the persons in the list, who had admittedly worked with the respondent-management, counsel for the respondent argued that the settlement took place during the cane crushing season of the year 1999 on 3rd December, 1999. However, the workmen did not join. According to the learned counsel, now to take them during the midst of the present season would mean that those persons, who had not joined in the year 1999 will have to be appointed in the season which started in the year 2001. Moreover, the persons who are now

employed will have to be retrenched if the members of the petitioner-union are allowed to join in the midst of the season and this will create further labour problem. The question whether the said workmen did not join after the settlement in the year 1999 or where not allowed to join is again disputed question of fact to be decided. This also cannot be decided in this writ petition. The proper remedy, therefore, would be only under the Industrial Disputes Act and not by filing this writ petition.

(11) Various authorites have been cited regarding maintainability of the writ petition. I don't go into the discussion regarding the same in view of the fact that even if the writ petition is held to be maintainable, necessary relief cannot be granted in this writ petition because the disputed questions of fact cannot be decided in this writ petition.

(12) Counsel for the respondent-management has argued that the settlement was for that particular season and not for subsequent periods. When I am holding that the writ petition is not the proper remedy (because of the factual aspects to be considered), I do not delve into this point which may be considered by the appropriate forum, if so approached.

(13) *As a result, this writ petition is dismissed however, with the observation that the petitioners may result to the remedy under the Industrial Disputes Act, 1947 if so advised.

R.N.R.

Before N.K. Sodhi & R.C. Kathuria, JJ

TULSI RAM—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 16419 of 2000

26th April, 2001

Constitution of India, 1950—Art. 226—Punjab Police Service Rules, 1959—Rls. 6, 8, 10 & 14—Recruitment to the posts of D.S.P.—Rule 6 (i) (a) provides eligibility for promotion to the rank of DSP as 6 years continuous service in the rank of Inspector—Govt. making temporary promotions by relaxing the condition of experience of 6 years