

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 13/2008

% **Date of Decision: 12th February, 2008**

THE DIR. GEN. WORKS CPWD Appellant
Through:Mr.Pankaj Batra, Advocate

versus

DAVINDER SINGH Respondent
Through:Mr. Varun Prasad, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed to see the judgment ? Yes
1. To be referred to the Reporter or not ? Yes
2. Whether the judgment should be reported in the Digest ? Yes

DR. MUKUNDAKAM SHARMA, CJ (ORAL):

C.M. No.402/2008 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

LPA 13/2008 and CM Nos. 400/2008(delay) & 401/2008(stay).

1. This appeal is directed against the judgment and order dated 18th April, 2007 passed by the learned Single Judge dismissing the writ petition of the appellant and upholding the award passed by the Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi(hereinafter called the "Tribunal").

2. The respondent was initially employed on 26th June, 1982 as a Wireman on muster roll and was posted in the Asian Games, Electrical Division-I, CPWD, Nehru Stadium, New Delhi. His services were terminated but the appellants themselves reinstated the respondent with effect from 23rd November, 1991 with full back wages and all the consequential benefits. The respondent is a qualified Electrician with a Diploma from ITI, and he has also licence of Wireman, Grade-II. There were about 50 workers working in his category as Wiremen, who were junior to him, who have been regularized. Specifically the case of Shri Hari Shankar was pleaded, who although was junior to the respondent and was appointed on the muster roll with effect from 30th June, 1982, his services were regularized in the time scale with effect from 31st March, 1993. The respondent, therefore, raised a claim that he too should be regularised in service as a workman with effect from 31st March, 1993, the date from which the services of his junior, namely, Shri Hari Shankar were regularised.

3. The aforesaid dispute was referred to the Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi for the purpose of adjudication and decision on the following terms:-

“Whether the action of the management of CPWD in not regularising the services of the workman Shri Davinder Singh, Wireman w.e.f. 31.3.1993 the date from which the services of his junior Shri Shankar were regularised is legal and justified? If not, to what relief the workman is entitled and from which date”.

4. The parties filed their written statement on the basis of which evidence was allowed to be led. After receiving evidence the learned Industrial Adjudicator proceeded to decide the matter on the basis of the evidence available on record. The learned Industrial Adjudicator passed his award on 13th June, 2006 holding that the action of the appellant management CPWD in not regularising the services of the respondent Shri Davinder Singh, Wireman w.e.f. 31st March, 1993 is neither legal nor justified and also that he is entitled to be regularized w.e.f. 31st March, 1993, i.e., the date on which the services of his junior Shri Hari Shankar were regularised. The learned Industrial Adjudicator also directed that the respondent should be paid all his arrears which accrued to him on his regularisation w.e.f. 31st March, 1993.

5. The appellant being aggrieved by the aforesaid award challenged the legality of the same before the learned Single Judge by filing a writ petition, which was considered and dismissed on the ground that the plea that is sought to be raised by the appellant, that there is no scheme at present under which the respondent could be regularised, was never pleaded nor raised at any stage of the case and, therefore, a new plea cannot be allowed to be raised in the writ petition.

6. Counsel appearing for the appellant has drawn our attention to the aforesaid orders passed by the learned Single Judge and has

submitted before us that the said findings are contrary to the available records. He has specifically drawn our attention to one of the contentions which was raised before the Industrial Adjudicator to the effect that in the reference proceedings the plea was raised by the appellant that the services of the respondent could not be regularised as the Ministry of Finance had imposed a ban on filling up of the posts. Therefore, a plea was raised before the learned Single Judge which in fact was also a plea which was raised and argued before the Industrial Adjudicator, therefore, it may not have been appropriate for the learned Single Judge to dismiss the writ petition on the aforesaid ground that no such plea was taken by the appellant herein.

7. Since the respondent has entered his appearance through his counsel, we have heard the counsel for the respondent on the appeal as well. Counsel appearing for the appellant has submitted before us that the services of the appellant were terminated at one stage and that there was a criminal case instituted against him. Relying on the said fact it was sought to be submitted before us that the respondent is not a fit person who can be ordered to be regularised. It is also submitted by him that the services of the respondent cannot be directed to be regularised in the manner in which it is being done in view of the decision of the Supreme Court in the case of Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors. (2006) 4 SCC 1. The

aforesaid statement of the counsel for the appellant is, however, refuted by the counsel for the respondent. In the light of the aforesaid submissions and the documents placed on record we proceed to dispose of the appeal by giving our reasons therefor.

8. So far the contention that the respondent cannot be ordered to be regularised in service because of his past conduct, we would only record that the respondent was initially employed on 26th June, 1982 as workman. His services were in fact and in reality terminated by the appellant. But the appellant themselves reinstated him in service with full back wages and all consequential benefits w.e.f. 23rd November, 1991. The appellant themselves having reinstated the respondent in service cannot now take up a plea that his services were terminated at one stage. The respondent shall be deemed to be continued in service in view of the order passed by the appellant themselves. So far the issue with regard to the institution of a criminal case is concerned, there was a criminal case registered against the respondent and he was also kept in police custody but subsequently the said case was dropped and, therefore, there was no stigma attached and, therefore, the respondent is entitled to all the benefits for his service. The aforesaid fact of termination of service and institution of a criminal case cannot be the material on the basis of which the appellant could deny the respondent the benefits of regularisation of his service for

which he was otherwise entitled.

9. On going through the records, we are of the considered opinion that there is a finding of fact recorded by the Industrial Adjudicator that his junior has since been regularised in service w.e.f. from 31st March, 1993. The appellant could not in any manner challenge the said finding of fact which is arrived at. We are also not inclined to re-appreciate the evidence inasmuch as there is ample evidence on record to prove and establish that his juniors have since been regularised in service. Therefore, it is a case of discrimination and not a case where the ratio of the decision of the case of Uma Devi case (supra) would be attracted.

10. In this connection we may appropriately refer to the decision of the Supreme Court in the case of Bal Kishan v. Delhi Administration and another (1990)1 LLJ 61. In paragraph 10 of the said judgment the Supreme Court has also held as under:

“10. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.”

11. In U.P. State Electricity Board v. Pooran Chandra Pandey & Others 2007 (12) Scale 304 the Supreme Court has held that the judgment in Uma Devi's case cannot be applied mechanically without

seeing the facts of a particular case. It was also held in the said decision that the decision in Uma Devi's case (supra) is clearly distinguishable. The said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. In the aforesaid case of U.P. State Electricity Board there were two sets of employees who were daily wagers, i.e., (i) the original employees of the appellant Board and (ii) the employees of the Society, who subsequently became the employees of the appellant Board. The Single Judge held that there was no ground for discriminating between the two sets of employees. The Division Bench upheld the order of the Single Judge. The issue therefore which had arisen before the Supreme Court was whether the respondents were entitled to be regularised in the services of the appellant Board, which according to the U.P. State Electricity Board was not permissible. The said appeal of the Board was dismissed by the Supreme Court holding that since the parties were all appointed in the Society before 4th May, 1990, they cannot be denied the benefit of the decision of the Electricity Board dated 28th November, 1996 permitting regularization of the employees of the Electricity Board who were working from before 4th May, 1990. It was held that to take a contrary view would violate Article 14 of the Constitution, and we cannot read Uma Devi's case (supra) in a manner which will make it in conflict with Article 14.

10. Similar are the facts and situation of the respondents in the present case as those of U.P. State Electricity Board case (supra). Therefore, we are of the opinion that when similarly situated persons have been given the benefit of regularisation there is no ground as to why the respondent should also not be given the same treatment, which has since been ordered to be given by the learned Industrial Adjudicator and approved by the learned Single Judge.

11. We find no merit in this appeal and the same is dismissed with costs of Rs.10,000/- which shall be paid to the respondent by the appellant within four weeks from the date of receipt of the order.

11. Since, arguments were advanced before us by learned counsel for the appellant on merit, we have heard the appeal on merits and since we have dismissed the appeal, the application seeking for condonation of delay and stay also stand disposed of accordingly.

CHIEF JUSTICE

REVA KHETRAPAL, J

**FEBRUARY 12, 2008
Rohtash**