

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

Date of decision: 17th March, 2011

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W.P.(C) 14238/2006

THE MANAGEMENT OF CPWD

..... Petitioner

Through: Mr. R.V. Sinha, Mr. R.N. Singh &
Ms. Sangita Rai, Advocates.

versus

HAR LAL

..... Respondent

Through: Mr. Ravinder Kumar Sharma,
Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The challenge in this petition is to the award dated 11th October,
2004 of the Industrial Tribunal on the following reference:

“Whether the action of the management of CPWD – Executive Engineer, “A” Division. CPWD and the Superintending Engineer (Electrical), Coordination Circle (Elect.) in not regularizing the services of Shri Harlal Singh as Mason w.e.f.

April, 1986 is justified? If not, to what relief the workman is entitled to.”

2. The Industrial Tribunal held that the action of the petitioner employer in not regularizing the services of the respondent workman as Mason w.e.f. April, 1986 to be unjustified and held the workman to be deserving of being regularized from April, 1986, with all benefits and emoluments that had accrued to the permanent employees on the same date. The petitioner employer was directed to pay the arrears which had so become due, within one month of the award failing which the same were to incur interest at 6% per annum.

3. This writ petition impugning the award dated 11th October, 2004 was filed in or about May, 2006 i.e. after more than 1 ½ year; in the petition the delay was attributed to the decision making process in the petitioner employer. Be that as it may, on 11th September, 2006 notice of the petition was issued and the operation of the award stayed. The said order has continued to remain in force till now. The respondent workman has filed a

counter affidavit to which rejoinder has been filed by the petitioner employer. The counsels have been heard.

4. The respondent workman had approached the Labour Court with a case of having been initially inducted in the petitioner employer as a Mason in the year 1986 and inspite of having completed 240 days each year, to be qualified to be regularized as a regular Mason, having not been so regularized. The petitioner employer in its reply before the Labour Court did not dispute the induction aforesaid of the respondent workman as Mason in the year 1986 and having continued on daily basis with the petitioner employer since then. It was however pleaded that the first entry date of the respondent workman was after 19th November, 1985 when ban was imposed on direct recruitment. It was also pleaded that the respondent workman had not passed the trade test for regularization purposes.

5. It however appears that subsequently a document dated 1st October, 1985 was produced before the Industrial Tribunal and which contained the name of the respondent workman amongst those to whom wages for the

period w.e.f. 21st August, 1985 to 20th September, 1985 were paid. The respondent workman on the basis thereof pleaded that he had in his claim petition wrongly claimed his induction in the petitioner employer w.e.f. April, 1986 and that in fact he was inducted into the services on 21st August, 1985 i.e. before the ban dated 19th November, 1985 on direct recruitment.

6. The Industrial Tribunal in the award has not adjudicated as to whether the respondent workman was first inducted on 21st August, 1985 i.e. before the ban or in April 1986 i.e. after the ban. It was held that the same was immaterial for the reason that even if the workman was inducted after the ban on recruitment, the respondent workman having nevertheless been recruited, the ban was irrelevant. With respect to the trade test it was held that since the respondent workman had worked for nearly 10 years prior to reference and for nearly 20 years by the time of making of the award, was entitled to relaxation in the matter of test which should have been taken at the time of initial appointment.

7. The writ petition challenges the award as bad on the ground of:-

- a. The appointment of the respondent workman being bad/illegal for the reason of being after the ban and without trade test;
- b. For the reason of the recruitment rules of the petitioner employer providing that no muster roll employee shall be considered eligible for appointment on regular post unless possesses the requisite qualifications and passes the prescribed test(s);
- c. The direction for regularization being in violation of the judgment of the Constitution Bench of the Apex Court in *Secretary, State of Karnataka v. Umadevi* (2006) 4 SCC 1 and subsequent judgments of the Supreme Court cited in the petition itself and following the judgment in *Umadevi*.

8. I may notice that in so far as the controversy as to the date of initial induction of the respondent workman in the petitioner employer is

concerned, the petitioner employer in its rejoinder to the counter affidavit (in the present proceedings) of the respondent workman has in para (v) of the reply to preliminary objections admitted that the initial date of engagement of the respondent workman was 21st August, 1985 but as a Beldar and the initial date of engagement as a Mason was 21st April, 1986. It is further stated that the respondent workman is still continuing as a Mason on muster roll.

9. It is indeed a sad commentary on the state of affairs that a workman has continued on muster roll for the major part of his working life i.e. for 25 years and without being regularized. Such engagement benefits neither the employer nor the employee. In spite of practice being repeatedly deprecated by the Courts, the same unfortunately continues to be pursued by the State.

10. However the Apex Court in *Umadevi* (supra) having held that emotions or sympathy has no place in such matters, the matter has to be viewed legally.

11. The Apex Court in *Umadevi* undoubtedly held that the Courts cannot issue directions for regularization of employees and held the same to be an executive function. The award in the present case even though of a date prior to the judgment in *Umadevi* would thus be in the teeth of the said judgment.

12. However the Apex Court in *Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmchari Sanghatana* (2009) 8 SCC 556 held that the purpose and object of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 with which it was concerned in that case was to provide for prevention of unfair labour practices and that the Industrial and Labour Courts were empowered, if unfair labour practice was proved, to declare that unfair labour practice and direct the person indulging in the same, to cease and desist from such unfair labor practice and take such affirmative action including payment of reasonable compensation to the employee affected by the unfair labour practice. It was further held that such issues pertaining to unfair labour practice were not referred to, considered or fall for consideration by the Constitution Bench in *Umadevi* case. In the facts

of that case it was found that the Industrial Court having found the employer in that case to have indulged in unfair labour practice of continuing employees for years with the object of depriving them of status and privileges of permanent employees, was entitled to direct the employer to reinstate the employees.

13. What has been held by the Apex Court in relation to the Maharashtra Act (supra) would equally apply to the Industrial Disputes Act, 1947 also. Section 2(ra) defines “unfair labour practice” as practices specified in the Fifth Schedule to the Act. Clause 10 of Part-I of the Fifth Schedule is as under:-

“to employ workmen as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.”

14. Section 25 T of the ID Act prohibits employers from committing any unfair labour practice and Section 25U makes the person committing unfair labour practice punishable with imprisonment which may extend to six months or with fine or with both.

15. It would thus be seen that the position here is no different from that noticed by the Supreme Court in *Casteribe* (supra). Whether an employer has practiced unfair labour practice or not would be an industrial dispute within the meaning of Section 2(R) of the ID Act. The Supreme Court in *Casteribe* held that the power of Industrial and Labour Courts did not fall for adjudication or consideration before the Constitution Bench. It was further held that *Umadevi* does not denude the Industrial and Labour Courts of their statutory power to order permanency of the workers who have been victim of unfair labour practice on the part of the employer where the posts on which they have been working exists. *Umadevi* was held to be incapable of an interpretation of overriding the powers of the Industrial and Labour Courts in passing appropriate orders under the ID Act, once unfair labour practice on the part of the employer is established.

16. It has not been and it is not the case of the petitioner employer herein that in the last over 25 years since when the respondent workman has been employed with it, there has been no post of a Mason and/or that no one else in the said 25 years and/or 20 years preceding the award had been

appointed to the post of Mason. The only defence to the claim of the respondent workman was of his initial induction being after the ban. However, the said defence also fails in view of the admission as aforesaid in the rejoinder filed in the present proceedings. The initial induction has been admitted to be of a date prior to the imposition of the ban. Merely because such initial induction was as a Beldar and upon the respondent workman continuing to be employed on muster roll he was after the ban promoted as a Mason would in my opinion not make any difference whatsoever.

17. The dispute referred to the Industrial Tribunal in the present case and the award, even though not expressly using the expression ‘unfair labour practice’ but the substantial meaning of the reference as well as the award was that only.

18. I have in *New India Assurance Co. Ltd. v. Shri Narender Kumar* (2010) IV LLJ 498 (Del) though noticing the judgment in *Casteribe*,

interfered with the award for the reason of not finding any unfair labour practice.

19. The counsel for the petitioner employer relies on :-

- i. ***Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.*** (2007) 1 SCC 408 - not only is this judgment of a date prior to the judgment in ***Casteribe*** but in this case it was found that the temporary employments were on compassionate grounds without existing post and the employer company was sick and before the BIFR;
- ii. ***Post Master General, Kolkata v. Tutu Das (Dutta)*** (2007) 5 SCC 317 - this was not a case relating to an Industrial Tribunal or a Labour Court and hence distinguishable from that in ***Casteribe***;
- iii. ***Satya Prakash v. State of Bihar*** (2010) 4 SCC 179 - in this case also the petitions were filed for regularization in accordance with para 53 of the judgment in ***Umadevi***. This judgment is also as such not apposite;

- iv. ***Gangadhar Pillai v. M/s. Siemens Ltd.*** JT 2006 (10) SC 265 - this judgment is again of a date prior to the judgment in ***Casteribe*** and purely on the basis whereof the respondent workman in the present case is held entitled to the relief from the Industrial Tribunal.

20. I am even otherwise of the opinion that equity and justice demands that the award be not interfered with. The Supreme Court in ***Chandra Singh v. State of Rajasthan*** AIR 2003 Supreme Court 2889 has held that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India is entitled to decline relief inspite of finding the petitioner entitled thereto, if finds the granting of relief to be inequitable and contrary to justice. Reference in this regard may also be made to:

- a. ***Tahera Khatoon v. Salambin Mohammad*** (1999) 2 SCC 635;
- b. ***ONGC Ltd. v. Sendhabhai Vastram Patel*** (2005) 6 SCC 454;

c. *Filmistan Exhibitors Ltd. v. NCT, Delhi* 131 (2006) DLT
648 &

d. *Babu Ram Sagar v. Presiding Officer, Labour Court*
(2007) I LLJ 930 (Del).

21. The respondent workman herein began his career with the petitioner employer and now when he must be nearing the end of his career, cannot be told to look for employment elsewhere.

22. The question however still remains whether the respondent workman is entitled to be regularized w.e.f. 1st April, 1986 as awarded by the Industrial Tribunal. The claim of the respondent workman was of initial appointment in April, 1986 and thus the question of the respondent workman being entitled to regularization w.e.f. that date itself does not arise. There is nothing to show that the respondent workman prior to the year 1986 raised any demand or claim for regularization. The Industrial Tribunal while answering the said

reference could not have directed regularization from any date prior to the award. The Supreme Court in *Union of India v. Sheela Rani* (2007) 15 SCC 230 has held that there could be no retrospective regularization. Hence the award calls for modification only to the extent it directs regularization of the respondent workman w.e.f. April, 1986. The respondent workman is directed to be entitled to regularization only w.e.f. the date of the award.

23. The petition is therefore partly allowed. The petitioner employer is directed to pay the balance emoluments of the respondent workman as if regularized w.e.f. 11th October, 2004 and till 28th February, 2011 within four weeks hereof together with interest on the arrears @ 6% per annum from the date when the emoluments for each month fell due month by month and till the date of payment. For delay beyond four weeks if any in payment, the petitioner employer besides other remedies of the respondent workman shall also be liable for interest @ 10% per annum. The order sheet does not show any costs of proceedings having

been paid. The respondent workman is also awarded costs of the present proceedings of ₹15,000/-.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 17th, 2011
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