

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.10267 of 2012
Date of decision: 4.12.2015**

Maghar Dass

... Petitioner

Versus

Industrial Tribunal Patiala & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. TS Sidhu, Advocate, for
Mr. Vikas Singh, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, A.A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The learned Presiding Officer, Industrial Tribunal, Patiala, by his award dated 11.11.2011 had declined the relief of reinstatement and instead granted compensation of Rs.40,000/- in lieu of reinstatement. The amount has been ordered to be paid within four months from the date of award failing which it will earn interest @ 6% per annum till the date of realization.

2. The position on the admitted facts is that the petitioner-Maghar Dass served on daily wage basis as a Beldar with the Forest Department for 7 odd years from 1993 to October 1, 2000 when his services were terminated without complying with the law in Section 25-F the Industrial Disputes Act, 1947 (for brevity 'the ID Act'). The Labour Court has applied the law in **Secretary, State of Karnataka & others**

Vs. Uma Devi & others, 2006 (4) SCC Page I, to non-suit the petitioner on the ground that proper procedure has not followed while offering him employment.

3. Learned counsel for the petitioner submits that the Forest Department did not take the plea before the labour court that the appointment of the Maghar Dass was de hors the rules and in violation of the scheme of appointments to public service in Article 16 of the Constitution of India. If the plea was not taken before the Labour Court in the pleadings then it is not open to be taken up for the first time in writ jurisdiction as ruled in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192. The decision in *Umadevi-3* has been explained by the Supreme Court in **Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya P. Karmchari Sanghatana**, (2009) 8 SCC 556, that the principle laid down in *Umadevi-3* does not apply to resolution of disputes before the Labour Courts and Tribunals. Moreover, engagement on daily wages is not against public posts and such engagements stand on no rule territory which method of appointments is permitted to the State to make them to meet exigencies of work as has been recognized in para 2 in *Umadevi-3* case itself, the Supreme Court observing at the outset that “A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages.”

4. The Labour Court, therefore, fell in error in applying the high standards of Article 14 & 16 of the Constitution of India to

employment of daily wagers who do not hold civil posts in the service of the State.

5. In the present case, the jurisdictional facts are satisfied with respect to the satisfying the concept of 240 days and lack of observance of procedural safeguards in the provisions of Section 25-F of the ID Act in breach. The termination is ex facie illegal and ab initio void and the principles laid down by the Supreme Court in **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**, AIR 1979 SC 75 : 1979 SCR (1) 56, would apply as reinforced by the Supreme Court in **State of U.P. v. Charan Singh**, 2015 (2) SCT 597, holding that in such a case it would not be appropriate to apply the law that reinstatement would not follow automatically to deprive the petitioner of his livelihood which is a facet of the right to life. In the presence of these noticeable flaws in the reasoning of the Labour Court which are fundamentally wrong, the award cannot be sustained when compensation of a paltry Rs.40,000/- has been granted to the workman for illegal termination which only to add insult to injury. I have no doubt keeping in view the law laid down in **Harjinder Singh's case (supra)**, **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana)**, (2010) 5 Supreme Court Cases 497, **Devinder Singh v. Municipal Council, Sanaur**, (2011) 6 SCC 584; **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors**, (2013) 10 SCC 324; **Jasmer Singh v. State of Haryana and another**, (2015) 4 SCC 458, and **Tapash Kumar Paul v. BSNL & ors.**, 2014(3) SCT 106, that the award does not deserve to be sustained. Consequently,

the petition is allowed. The award is set aside. The petitioner is reinstated in service with back wages. He will take continuity of service as well. The back wages be calculated and paid to the petitioner within three months from the date of receipt of certified copy of this order, failing which it will earn penal interest @ 18% per annum till realization to ensure speedy compliance and not fan further litigation in execution etc. except appeal against this order, which is a right, and towards that end the reasonable period of three months is granted.

(RAJIV NARAIN RAINA)
JUDGE

4.12.2015
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