

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

I.

Civil Writ Petition No.19990 of 2012

Date of decision: 16.10.2015

Vice Chancellor, Kurukshetra

... Petitioner

Versus

Raj Rani and another

... Respondents

II.

Civil Writ Petition No.15469 of 2011

Surender Kumar

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

III.

Civil Writ Petition No.15474 of 2011

Ram Sahay

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

IV.

Civil Writ Petition No.15483 of 2011

Shashi

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

V.

Civil Writ Petition No.17418 of 2011

Jagtar Singh

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

VI.

Civil Writ Petition No.20155 of 2012

Vice Chancellor, Kurukshetra University and another

... Petitioners

Versus

Jaswinder Singh and another

... Respondents

VII.

Civil Writ Petition No.20184 of 2012

Vice Chancellor, Kurukshetra University and another

... Petitioners

Versus

Kulwant Singh and another

... Respondents

VIII.

Civil Writ Petition No.20193 of 2012

Vice Chancellor, Kurukshetra University and another

... Petitioners

Versus

Vijender Kumar and another

... Respondents

IX.

Civil Writ Petition No.20629 of 2012

Shiv Kumar

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

X.

Civil Writ Petition No.20630 of 2012

Janak Raj

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

XI.

Civil Writ Petition No.21306 of 2011

Kanwar Bhan

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

XII.

Civil Writ Petition No.21971 of 2012

Shiv Shankar

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

XIII.

Civil Writ Petition No.22015 of 2012

Phool Chand

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

XIV.

Civil Writ Petition No.22021 of 2012

Krishan Kumar

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

XV.

Civil Writ Petition No.22030 of 2012

Devi Lal

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

XVI.

Civil Writ Petition No.23449 of 2012

Surinder Kumar

... Petitioner

Versus

P.O. Labour Court and others

... Respondents

XVII.

Civil Writ Petition No.22238 of 2012

Subhash Chand

... Petitioner

Versus

Kurukshetra University, Kurukshetra and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Surinder Kumar Daaria, Advocate, for
Mr.M.S.Sindhu, Advocate,
for the petitioners in CWP No.19990,
20155, 20184, 20193 of 2012

Mr.J.S.Cooner, Advocate,
for the petitioners in CWP No.17418 & 21306 of 2011,
CWP No.20630 and 20629 of 2012.

Mr.Hardeep Singh Dhillon, Advocate,
for Mr.Vikram Singh, Advocate,
for the petitioner in CWP No.23449 of 2012.

Mr.Rajesh Arora, Advocate,
for the petitioners in CWPs No.15469, 15474,
15483 of 2011, 22030, 22015,
22021 & 21971 of 2012.

Mr.Ajay Kumar, Advocate, for
Mr.A.P.Bhandari, Advocate,
for the petitioner in CWP No.22238 of 2012.

Mr.Naveen Daryal, Advocate,
for respondent No.1 in CWP No.19990 of 2012.

Mr.Ramesh Hooda, Advocate,
for respondent No.2 & 3 in CWP No.22021 of 2012,
CWP No.15483, 15469 and 15474 of 2011.

Mr.Surinder Kumar Daaria, Advocate, for
Mr.M.S.Sindhu, Advocate,
for respondents No.2 and 3 in CWPs No.21971,
20629, 20630, 22015, 22030 of 2012, 17418, 21306
of 2011.

Mr.Rajesh Arora, Advocate,
for the respondent-workman in
CWP No.20184, 20155 and 20193 of 2012.

Mr.Rajinder S. Rana, Advocate,
for respondents No.2 and 3 in CWP No.23449 of 2012.

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

RAJIV NARAIN RAINA, J.

1. This order will dispose of the aforesaid 17 writ petitions. By consent, the main case in the set of cases filed by the Vice Chancellor, Kurukshetra University is CWP No.19990 of 2012 titled Vice Chancellor v. Raj Rani and another.

2. The workman and the Kurukshetra University are both aggrieved against the award dated 27th April, 2012 passed by the Presiding Officer, Labour Court, Ambala and have approached this Court in its writ jurisdiction assailing the impugned award in different ways as below.

3. The writ petition has been filed by Mr.Mahabir Singh Sindhu, Advocate for the University. The award is defended by a host of the learned counsel.

4. The brief facts are that Raj Rani respondent No.1-workman was

employed as a casual labourer on daily wages on 2nd February, 2001. Her services were terminated on which she raised the dispute with the management. The matter went in conciliation proceedings which failed. The Labour-cum-Conciliation Officer, Kurukshetra submitted his failure report recording reasons why the dispute could not be settled amongst the parties. The appropriate Government made a reference of the dispute regarding termination to the Labour Court, Ambala where the proceedings were held. The University contested the case and filed its statement of claim. Parties adduced their oral as well as documentary evidence on record.

5. The admitted position was that the engagements had been effected without appointment orders nor was the termination made in writing.

6. The stand of the University was that Raj Rani and the other workmen in the connected cases were engaged through a contractor engaged by University through its outsourcing policy of keeping the University campus clean through contractual sweepers. There was other work also which brought Peons, Baildars etc. to serve the University through contractors. The University denied direct relationship with the employees. These 17 cases concern Class-IV employment.

7. The Labour Court has disagreed with the stand of the University and held Raj Rani and others to be direct appointees. It has held the termination to be illegal for want of compliance of Section 25-F of the Industrial Disputes Act, 1947 [in short, “the Act”] and has awarded reinstatement with continuity of service and 50% back wages. The University argues that the workmen were never appointed against regular

posts. As in the very nature of things, they came through outsourcing policy and their services cannot be thrust upon the University on a permanent basis. The University says that the award has virtually granted undue benefit to respondent No.1 and others similarly situated. The outsourcing policy has been adopted on a fiat of the State Government which has deep and pervasive control over the functioning of the Kurukshetra University. The outsourcing policy was adopted on 1st September, 2006. Therefore, the engagement of respondent No.1 etc. is not against the budgeted posts which do not exist and she cannot, therefore, stake her claim based on direct relationship of employment between the University and her. It is not disputed that Raj Rani served a demand notice dated 9th February, 2009 on the University, upon which, the conciliation proceedings were attempted but brought no fruit necessitating adjudication of the disputes.

8. On merits, the University defended by pleading that Raj Rani had not completed 240 days of continuous and uninterrupted service in a calendar year preceding the date of alleged termination.

9. It is remarkable that in case of five workmen, i.e., Kuber, Ram Rattan, Narender Saini, Rajesh Sharma and Nanu Ram in reference No.97, 92, 96, 250 and 252 of 2008 respectively; the Labour Court dismissed the claim of the workmen and declined the reference. These five are in Court assailing the awards of the successor Labour Court accepting the reference claiming parity of treatment in terms of relief with those who have remained successful before the same Labour Court at Ambala

10. The University supports those awards in the cases of these five employees and claims equal treatment that the present set of cases should

also be disposed of in terms of the other awards in favour of the University. Therefore, these 17 cases represent two sides of the coin but with hugely different results. The work done by the two Labour Courts with conflicting results in the same set of facts and circumstances has to be harmonized by a common principle governing as to whether all the workmen deserve relief or not but this Court will fail in its duty if it were to examine the two sets of cases differently with different results. The conflict created by the successor Labour Court has to be removed one way or the other which is the scope of the present proceeding.

11. The University takes its stock pleas based on past precedent that when the entry of the workmen was not as per rules, the workers are not entitled to the resultant benefit of breach of provisions of Section 25-F of the Act even if the person had completed 240 days of service. The employment in the University qualifies public employment and the appointment has to be as per rules and regulations of the University and in conformity with Articles 14 and 16 of the Constitution of India. The present workers were engaged as casual Labourers and their engagement were purely temporary in nature and no rule was required to be followed while disengaging their services. Principles of natural justice could not be extended that far as to assign reasons for departure or hear the workers before their services were disengaged. Compliance of Section 25F of the Act was not necessary by the University as it was not the employer. The University in its pleadings in the writ petition relies on a selection of judgments which are noticed : **Head Master, Government High School**

Behrana v. Ajit Singh and another; 2003 (4) RSJ 780, Municipal

Council, Samrala v. Raj Kumar; (2006) 3 SCC 81; Gangadhar Pillai v. Siemens Limited; (2007) 1 SCC 533, Indian Drugs & Pharmaceuticals Limited v. Workmen; (2007) 1 SCC 408, Reserve Bank of India v. Gopinath Sharma and another; (2006) 6 SCC 221, UP Power Corporation Limited and another v. Bijli Majdoor Sangh and others; (2007) 5 SCC 755 and Mahendra L. Jain v. Indore Development Authority; 2005 (1) RSJ 419.

12. It is contended that the University is amenable to the rules, regulations and standards set by the University Grants Commission, New Delhi and is an autonomous body created under the Kurukshetra University Act, 1956. It has framed its rules governing the conditions of service of its employees and in matters which are not covered by rules framed by it for the employees the rules and instructions applicable to the State Government employees are adopted and made applicable to the employees of the petitioner University. They rely on the ruling of the Supreme Court in **Himanshu Kumar Vidyarthi v. State of Bihar and others; (1997) 4 SCC 560** to urge its ratio applies to the present set of cases holding that when the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded. Hence in the present case, the reference itself is not maintainable under the provisions of the Industrial Disputes Act, 1947 and the same is liable to be rejected.

13. On the question of completion of 240 days of service, the University submits that onus was on the workman but she did not produce any evidence to show that she had completed 240 days in the period prescribed before termination. The University complains that the Labour

Court could not have transferred burden and onus on the University to prove otherwise.

14. The University disclaims that it is an industry within the meaning of Section 2(j) of the Act being an educational institution and on analogy draws support from the decision of the Supreme Court in **Physical Research Laboratory v. K.G.Sharma**; 1997 (3) RSJ 215 wherein it is held that the Physical Research Laboratory is not an industry even though it carries out activities of research in a systematic manner with the help of its employees as it lacks that element which would make it an organization carrying on activity which can be said to be analogous to trade or business because it does not produce services which are intended or meant for satisfying human wants and needs as ordinarily understood and the impugned award passed by the Labour Court was set aside by the Supreme Court in ruling. The University claims to be similarly placed as the Physical Research Laboratory and deserve equal treatment. I would not agree with the University on this. A university is not a pure research laboratory. It falls in the spectrum of “industry” within Section 2 (j) of the Act governed by the principles in **Bangalore Water Supply & Sewerage Board v. A. Rajappa**, AIR 1978 SC 548 overruling earlier dicta in the ruling in **Re; University of Delhi v. Ram Nath**, (1964) 2 SCR 703=AIR 1964 SC 1863 holding that educational services are wealth and are “industrial” per Hon. Krishna Iyer, J. following the authority in **Corporation of City of Nagpur v. Employees**, (1960) 2 SCR 942.

15. On the median of these arguments, the impugned award of the Labour Court deserves to be tested because only one view can possibly to

be taken on the same set of facts. This is the judicial dilemma that requires to be set right in the two sets of cases arising out of proceedings in the same labour court.

16. As per the work person, she joined service in the year 2000. Since this Court is judicially reviewing the award passed by the Presiding Officer, Labour Court, Ambala, I can only say that nfo labour has been put in by the Labour Court and the discussion in the award declining the reference is sketchy in nature and content and the ramifications are large which have to be resolved on the evidence. The two contradictory awards have widened the area of research in writ jurisdiction by necessarily having to delve into pleadings, record and to re-appreciate the evidence even though traditionally that road is less travelled since the writ Court would normally not re-weigh the evidence and come to a different conclusion and substitute its opinion from that of the labour court.

17. I have read the statement of claim filed by the workman and the University which are on file. It is asserted in preliminary objection No.3 that respondent No.1 worked with the University till 31st December, 2007, after which, her services were no longer required by the University. Besides, she was engaged with effect from 1st January, 2008 to 3rd June, 2008 on daily wages by the contractor of the University, for which reason this Court has read the demand notice under Section 2A read with Section 10(1)(c) of the Act, where she asserts that she was appointed as a Sweeper in the year 2000 on daily/monthly wages as fixed by the Government from time to time. She worked firstly in the Sanitation Department of the University under Tara Singh alias Mattu Ram and then under Shish Pal Narang. At that time, Hawa

Singh was the Registrar and L.C.Gupta was the Secretary of the University. She worked continuously without any break in service other than notional breaks just to deprive the applicant to seek the benefits of the regularization policy of the State Government. She worked on muster rolls under sanctions and on contract basis issued vide endorsement No.3332 dated 30th July, 2001 onwards. She appended the sanction orders for perusal. She was paid anything between ₹ 2360/- to ₹ 2800/- per month which were her last drawn wages. She worked until 20th November, 2008 when she was deprived of work and livelihood without any genuine cause, without advance notice or payment of wages in lieu of notice period and retrenchment compensation with the ulterior motive to oblige juniors to her by retaining them, namely, Rani wife of Mehar Chand, Rani wife of Parkash, Sheela daughter of Jagtu, Sundri wife of Randhir, Meena wife of Dharma and Chander Pal etc. who were junior to the workman and are still working with the University. She has enumerated her work details in para. 5 against sanction orders on muster rolls, attendance register and acquittance rolls which are in the custody of the University. These facts prove that she worked till 20th November, 2008 and she was removed without complying the prerequisites in Section 25-F of the Act only with a view to adjust the favourites of the respondents. It was her case that many of her juniors are still in service and some of them have been regularized. She approached the respondents on regular basis requesting them in writing as well as orally to reinstate her in service with full back wages and to regularize her services being similarly-placed with others but the University did not pay any heed to her requests which left her no alternative except to invoke the jurisdiction

under the Industrial Disputes Act, 1947. She asserted in para. 6 that she was unemployed and on the road and was not able to get any gainful employment elsewhere. It is, thus, obvious that the reply to the demand notice which was made statement of claim by the University before the Labour Court was factually inaccurate and suppressed many facts and material particulars which if principles of non-traverse are applied, would amount to admission. It is well settled that admission is the best evidence and no evidence has to be led to establish those facts which are not disputed.

18. I have read the statement of Raj Rani appearing as her own witness WW1 at Annexure P-4 at page 52 of the paper-book. She stated in her cross-examination that after discontinuing her services in 2008, she has been working at KU through a Labour Contractor. She voluntarily stated that she never worked through contractor and the statement was made on 21st April, 2011 before the Labour Court. MW1 Sanjay Rathee, Clerk Establishment Branch, Kurukshetra University when produced for cross-examination, deposed that the plaintiff-workman was engaged by the management in February, 2001 and she worked till 31st December, 2007. He did not know whether the attendance record of the plaintiff is available as only the Sanitation Department could speak in this regard. He was asked a court query: Does the University issue Identity Cards?; to which the witness replied, only regular employees are issued identity cards. However, the identity card does not indicate whether the employee was regular or on daily wages. He admitted that the seniority list of the plaintiff [sic. Work person/workman] was not maintained and at the same time stated that it was

wrong to say that 5 to 6 persons [mentioned above] were junior to the work person. He did not know whether their services were disbanded. He admitted that neither notice of termination was served nor retrenchment compensation paid to the work person at the time of departure. He admitted as correct that the duty which the Raj Rani performed still exists with the management. Rajbir Singh Inspector, Sanitation Department, Kurukshetra University appeared as a management witness and deposed that no record of attendance of the workman-plaintiff is available because it is very old. There is no provision to maintain record of daily wage workers. No list of daily wagers/contract based employee is prepared and that is the reason of inability to produce such documents.

19. There is not an iota of evidence of presence of a contractor on the record presented in the paper-book, his name, address etc remain a mystery. No contractor was produced as a witness by the management. No record was produced whether the University was registered and the alleged contractor held a license under the Contract Labour (Regulation and Abolition) Act, 1970. In the absence of such evidence, a presumption can validly be drawn that there was no contractor in between the workman and the University and she was a direct employee on contract and on daily wages. The Labour Court has drawn an adverse inference by non-production of record but has not discussed or examined the issue from the point of view of the contractor which was an essential element for its consideration for dispensation justice and adjudicating the rights of the parties. However, the award cannot be disturbed only in absence of discussion on the point since there is sufficient evidence on the file of this case to support a conclusion

that there was no contractor in sight. On 23rd January, 2015, this Court passed the following interim order : -

“Present: Mr. Mahabir Singh Sindhu, Advocate.
Mr. Ramesh Hooda, Advocate.
Mr. Naveen Dariya, Advocate.
Mr. A.P. Bhandari, Advocate.
Mr. Rajesh Arora, Advocate.
Mr. Rajinder S.Rana, Advocate,
for respondent Nos.2 & 3 in CWP No.23449 of 2012.

Since the University has engaged more than one counsel in these set of cases then Mr. Ramesh Hooda, Advocate, Mr. Mahabir Singh Sindhu, Advocate and Mr. Rajinder S.Rana, Advocate will jointly formulate their defence and present it before the Court on the adjourned date.

University will file an affidavit indicating how many people worked shoulder to shoulder with the petitioners and have been regularized under policies of regularization/Court orders and how many of them were left behind being regularized and are said to be still working under different employers/contractors but for the same University-respondent.

The affidavit would indicate the dates of regularization of those who have received benefit so far and the dates of appointments of the petitioners under the University and before the contractors and outsourcing policy was adopted.

List on 12.02.2015.

Order dasti.

A photocopy of this order be placed on the files of other connected cases.”

20. In response to the interim order, affidavit dated 18th April, 2015 has been filed by the Registrar, Kurukshetra University. In para. 3 of the affidavit, the following has been deposed :-

“3. That Smt.Raj Rani petitioner No.1 was engaged on 02.02.2001 as Sweepers on daily wage basis having no

sanctioned post and her services were dispensed with w.e.f. 25.09.2001. Her services were again engaged on 16.11.2001 and she worked upto 10.07.2002 on daily wage/contract basis and again from 16.01.2004 to 31.12.2007 with notional breaks on contract/daily wage basis. She also worked through contractor/out sourcing policy from 01.01.2008 to 04.06.2008 and after that she is not working in the University but it is not sure as to whether she left the job at her own or was disengaged by the Contractor. The service of 14 persons working with her have been regularized w.e.f. 01.07.2014 under Haryana Govt. regularization policy of 2014. The detail of her working period as well as name of the persons whose services have been regularized, are shown in the enclosed (Annexure 'A'). But the services of Smt.Raj Rani were not regularized because she did not fulfill the condition No.1 of regularization policy of State Govt. issued on 18th June, 2014 as she was not in service on 30th June, 2014 (Annexure 'B').”

21. Annexure 'A' with the affidavit is the detail of engagements in work of Raj Rani. It is to the following effect : -

Sr.No.	Date engagement on contract/D.W. basis		
	From	To	Nature of engagement
1	02.02.2001	01.05.2001	Daily Wage
2	03.05.2001	30.7.2001	Daily Wage
3	01.08.2001	25.9.2001	On Contract
4	16.11.2001	12.02.2001	Daily Wage
5	14.02.2002	13.05.2002	Daily Wage
6	15.05.2002	10.07.2002	On Contract
7	16.01.2004	13.04.2004	On Contract
8	15.04.2004	12.07.2004	On Contract
9	14.07.2004	26.07.2004	On Contract
10	28.07.2004	19.10.2004	On Contract
11	21.10.2004	17.01.2005	On Contract
12	19.02.2005	14.04.2005	On Contract
13	16.04.2005	13.07.2005	On Contract
13	15.07.2005	29.09.2005	On Contract

Sr.No.	Date engagement on contract/D.W. basis		
14	01.10.2005	15.11.2005	On Contract
15	17.11.2005	13.02.2006	On Contract
16	15.02.2006	31.03.2006	On Contract
17	03.04.2006	29.06.2006	
18	01.01.2007	31.12.2007	Daily Wage
19	01.01.2008	04.06.2008	Outsourcing

22. The list of persons whose services have been regularized as per Haryana Government policy of 2014 annexed with the affidavit reveals as follows : -

Sr.No.	Name	Desig.	Date (Initial engagement on contract/D.W. Basis			Date of regularizat ion of service
1	Dharamender	Sweeper	15.11.2000	05.04.2002	05.04.2002	01.07.2014
2	Sunil	Sweeper	15.11.2000	05.04.2002	05.04.2002	01.07.2014
3	Balraj	Sweeper	17.11.2000	05.04.2002	05.04.2002	01.07.2014
4	Krishan	Sweeper	18.11.2000	05.04.2002	05.04.2002	01.07.2014
5	Ramesh	Sweeper	20.11.2000	05.04.2002	12/30/99	12/30/99
6	Raj Rani	Sweepress	02.02.2001	16.01.2004		Not in the service at the time of regularisati on
7	Soma Devi	Sweeper	19.02.2001	12.01.2002	12.01.2002	01.07.2014
8	Shimla Devi	Sweeper	20.02.2001	21.07.2001	21.07.2001	01.07.2014
9	Neelam	Sweeper	20.12.2002	20.12.2002	20.12.2002	01.07.2014
10	Rani	Sweeper	13.10.2003	13.10.2003	13.10.2003	01.07.2014
11	Ram Vazir	Sweeper	10.02.2004	10.02.2004	10.02.2004	01.07.2014
12	Kanta Rani	Sweeper	11.02.2004	11.02.2004	11.02.2004	01.07.2014
13	Vidya Devi	Sweeper	14.02.2004	14.02.2004	14.02.2004	01.07.2014
14	Meena	Sweeper	28.02.2004	28.02.2004	28.02.2004	01.07.2014
15	Rajinder Kumar	Sweeper	04.03.2004	04.03.2004	04.03.2004	12/30/99

It is mentioned here that the services of the above mentioned persons were regularized from the date of their initial date of appointment on contract basis.

Smt.Raj Rani put on contract basis against the budged post with effect from 16.01.2004.”

Against the name of Raj Rani at Serial No.6 in the table, the

date of her initial appointment on daily wages is recorded as 2nd February, 2001 and on contract since 16th January, 2004. The persons at serial No.11 to 15 have been regularized even though their services were brought on contract after Raj Rani. Annexure A-1 confirms that the workman continued to serve on contract basis from 2004 to 2006 and on daily wages from 1st January, 2007 to 31st December, 2007 and thereafter in the outsourcing policy from 1st January, 2008 to 4th June, 2008. The note in list 2 with the affidavit remarks under the column, 'Date of Regularization of service' where it is recorded against the name of Raj Rani the words, “not in service at the time of regularisation”.

24. The Haryana Government policy issued in General Administration Department [General Service-I] Notification dated 18th June, 2014 is placed as Annexure 'B' with the affidavit. The terms and conditions of regularization of the services of Group-C and Group-D employees/workers engaged on contract basis have been spelled out. The foremost of which is that the employees should not have worked for less than 3 [three] years as on 30th June, 2014 and are still in service. This affidavit reveals a sorry state of affairs in the case of Raj Rani and those who belong to her ilk in the present petitions. It is now established that from 2nd February, 2001 to 31st December, 2007 Raj Rani was an employee of the University and was put to outsourcing mode only in 2008 for which she cannot be faulted as employment on whatever terms were beyond her control or domain and the services of the workman had not been validly terminated in 2008. The fact that she is continuing working in the University premises as per admitted position even after 2008 as a daily

wage employee under a contractor is exploitative in character. Had she continued in service she would have reaped the benefits just as those who are appointed with her reaped and were regularized. This leads to sheer discrimination and is hit by Article 14 & 16 of the Constitution of India. In case the Labour Court award is upheld, then she gets reinstatement and by the deeming fiction of law, she would take continuity of service as well with effect from 18th June, 2014 when the notification was issued by the Government of Haryana applicable to the University. She would be deemed to have worked continuously for “not less than 3 years as on 18th June, 2014” and much prior thereto because of the continuity given by the Labour Court while setting aside her illegal termination and granting her reinstatement with continuity of service but with 50% back wages.

25. I have dealt with this aspect of unfair discrimination in the light of continuity given by awards of the labour courts and its effect on regularization where those who continued in service and were among the fortunate group in great detail in case **Khajjan Singh and others v. State of Haryana and others**; 2105 (1) SCT 604, the reasoning in the decision of which will be read into this judgment and order. In *Khajjan Singh*, this Court held [appeal has been dismissed] that where facts are not disputed and not for the sake of refutation alone, the result in terms of relief can be achieved directly in writ proceedings to erase unfair discrimination and prevent violation of Article 14 of the Constitution.

26. The issue of discrimination was dealt with by the Supreme Court in **Hari Nandan Prasad and another v. FCI**; 2014 (2) SCT 234. The Supreme Court held in para. 38 that non-regularization of appellant No.2 therein while giving the benefit of the circular dated 6th May, 1987 to other

similarly situated employees and regularizing them would, therefore, be clearly discriminatory. In preceding para. 34, the Supreme Court made an important observation commenting: -

“However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.”

27. This ruling advances justice in favour of Raj Rani. I may before parting notice the judgment of the Supreme Court in **Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana**; (2009) 8 SCC 556 which has explained **Secretary, State of Karnataka and others v. Umadevi**, (2006) 4 SCC 1 [*Umadevi-3*] with distinguished principles laid down in thereunder do not apply to Labour Court jurisdiction and *Umadevi-3* can only be read as a direction to the Supreme Court itself and the High Courts not to pass orders of regularization of daily wagers/contract/*ad hoc* employees who came by back door of employment and secured illegal appointments to public posts.

28. This is not the position in this case set up by Kurukshetra University that the initial appointment of the petitioner was illegal or void to start with and the affidavit filed by the Registrar confirms this fact. Also nothing has been said in the reply filed by the University before the Labour Court that the appointments were themselves illegal which stand would have reflected badly on the University's fair name. If this issue was not raised before

the Labour Court, it cannot be raised for the first time in writ jurisdiction in view of the decision of the Supreme Court in **Harjinder Singh vs. Punjab State Warehousing Corporation**, (2010) 3 SCC 192 [para 8] not to accept an argument taken for the first time in assailing an award of a labour court based on the appointment being illegal and de hors Art. 14 & 16 of the Constitution.

29. For variety of reasons noticed above and for the reasons recorded in the preceding paragraphs, the impugned award is maintained in its conclusion that the relief was admissible *inter alia* on the ground of unfair discrimination and for breach of Section 25-F of the Act. Hence, the award is not open to correction on judicial review within the scope of the supervisory jurisdiction provided by Articles 226 and 227 of the Constitution.

30. It is the duty of the Constitutional Court as explained in extenso in *Khajjan Singh* after noticing both *Umadevi-3* and *Casteribe* [supra] and other cases on the point of primary and secondary review including in **Union of India v. Ganayutham**, (1997) 7 SCC 463 and **Om Kumar v. Union of India**, (2001) 2 SCC 386[both authored by Hon. M. Jagannadh Rao,J.] explaining the twin facets of Article 14, that is, of reasonableness and unfair discrimination. Accordingly, the present worker deserves the same relief as was given to her counterparts who were retained in service and thus gained benefit of regularization of their services by orders passed by Kurukshetra University which are not of a litigious nature or Court induced as explained in *Umadevi-3*. The respondent workers had every right to approach the Labour Court for relief against unfair and illegal termination effected without any just cause or legal justification. They have a right to request the Court to lift the veil to find the true nature of the employment and the liabilities of the University flowing from revelation in favour of the workers, parties to the present litigation.

31. As a result, the workers' writ petitions are allowed and their

awards are upheld with a direction to the Kurukshetra University to pass fresh orders by considering cases of the workmen for regularization on reinstatement keeping in mind the continuity of service granted by the Labour Court which push them back to their original status with a consequential right of consideration for regularization under notification dated 18th June, 2014 Annexure 'B' placed along with the affidavit of the Registrar, Kurukshetra University, Kurukshetra dated 18th April, 2015 by legal fiction created by continuity of service granted to them.

32. Conversely, the impugned awards where relief has been declined are set aside and the conflict between two sets of the awards is resolved in the above manner so that all the workers are put at par and seen equal treated under the law and in the same set of facts. This would bring in the usufruct of the guarantees in Art. 14 of the Constitution to the suppressed workers who lost their livelihood and had to fight for their rights in courts.

33. There is yet another reason to grant relief to the unsuccessful workmen. This is not far to see. The issue which has cropped up in this petition and its accompanying petitions was an issue addressed directly in CWP No.7363 of 2012; **Shiv Raj and others v. Kurukshetra University** and resolved by the learned Single Judge of this Court on 3rd April, 2013 which case dealt with regularization of services of Peons, Baildars etc. in Class-IV services in Kurukshetra University itself. The petitioners claimed regularization in the light of the policy decision then prevalent on 1st October, 2003 floated by Government of Haryana and adopted by Kurukshetra University regarding regularization of services of daily wage Class-IV employees who had served the University for 3 years prior to the date of policy, i.e., 1st October, 2003 and were working against vacant posts. Their cases for regularization were not considered in terms of that policy as on the

cut off date by the University because they were not in service on account of retrenchments effected. Ultimately, the retrenchment was held to be bad by the labour court and the University was directed to take back the petitioners in service by granting them continuity. As a consequence, the petitioners were deemed to be in service on the cut off date fixed in the policy. The Court relied on the earlier dicta of this Court on the point in **Dalip Singh and others v. State of Haryana and others**; 1991 (1) RSJ 722 and two unreported judgments of the learned Single Judge in CWP No.5848 of 2011; Karamvir Singh v. State of Haryana and others decided on 11st January, 2012 and in LPA No.1236 of 2012; State of Haryana and others v. Krishan Singh decided on 28th August, 2012 where the relief was given to similarly situated persons whose cases were not considered in terms of the policy and they were ordered to be regularized in service. The Kurukshetra University was directed to consider the cases of the petitioners therein against available Group 'D' posts for which they were eligible and to regularize their services from the date the services of persons junior to the petitioners were regularized. The monetary benefits accruing to the petitioners in that case as a result of the order was restricted to 38 months from the date of filing of the writ petitions.

34. I see no different prism in dispensing justice by applying the rule of equality of opportunity granted to Shiv Raj etc. Peons and Beldars and denied to the present petitioners by reason of keeping them out of service by unlawful orders while they worked as safai karamcharis/sweepers in Class-IV service. The defence of the University of a go-between contractor has been falsified by the labour court for lack of evidence to support indirect employment with no responsibilities towards menials. The University must recognize its social obligations towards the poor workers it hires by subterfuge remaining always alive to the high moral ground on which the premier

University of Haryana stands as an educational institution of excellence which ought never to be seen keeping its house clean on the blood, sweat and tears of a small but deprived community of down trodden workers, not to deprive them of their only source of livelihood while each of them have a family to feed. This is a facet of Art. 21 of the Constitution. It is also a facet of “humanism” in Art. 51A (h) of the Constitution guiding all citizens to inculcate the spirit of humanism in every action they perform and such a responsibility shouldered without bending in apathy is far greater and more sublime to be discharged by all those who hold positions of power to lend the helping hand with fair wages and security against hunger and want and sudden dislocation of employment brought about callously. That is why I spoke of pragmatic humanism while dealing with daily wage employees in the Haryana Forest Department etc. in *Khajjan Singh* (supra) to award them regularization of service in the light of awards of labour courts granting substantial relief of reinstatement and continuity of service as though the illegal orders of termination were never passed. That is the legal consequence of continuity.

35. Accordingly, the petitions stand disposed by a uniform and common order removing conflict of decisions occasioned in the labour court at Ambala putting both the parties in a quandary.

(RAJIV NARAIN RAINA)
JUDGE

October 16, 2015

Paritosh Kumar