IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.22846 of 2015

The Chief Medical Officer, General Hospital, Bhiwani and others

... Petitioners

Versus

Vijay Kumar and another ... Respondents

2. CWP No.22848 of 2015

The Chief Medical Officer, General Hospital, Bhiwani and others

... Petitioners

Versus

Sunita and another ... Respondents

3. **CWP No.22877 of 2015**

The Chief Medical Officer, General Hospital, Bhiwani and others

... Petitioners

Versus

Smt. Nirmla and another ... Respondents

Date of Decision: 28.10.2015

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

Present: Mr. J.S. Bedi, Addl. AG, Haryana.

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

RAJIV NARAIN RAINA, J.

1. This order disposes of CWP No.22846 of 2015 titled *The Chief*

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Medical Officer, General Hospital, Bhiwani and others vs. Vijay Kumar and another, CWP No.22848 of 2015 titled *The Chief Medical Officer, General Hospital, Bhiwani and others vs. Sunita and another* & CWP No.22877 of 2015 titled *The Chief Medical Officer, General Hospital, Bhiwani and others vs. Smt. Nirmla and another*. Common questions of law and fact arise and can be conveniently decided together. The facts are not in dispute.

2. The State of Haryana through the Chief Medical Officer, General Hospital, Bhiwani has filed this writ petition challenging the award of the Labour Court, Hisar dated August 08, 2014 awarding reinstatement with continuity of service but without back wages.

3. Mr. Bedi is unable to point out any flaw in the award of the Labour Court.

4. The Labour Court has returned a finding that though the appointment of the 1st respondent as Dhobi on daily wages was for the period of six months under a written contract but that period was extended from time to time and consequently he worked continuously and uninterruptedly from July 07, 2009 to April 12, 2013. The Court has also held on evidence and especially on reading the testimony of MW-1 Dr. Anil Choudhary, Senior Medical Officer, Civil Hospital, Bhiwani that the post on which the respondent-workman was appointed remained in existence throughout the period of enforced idleness and still does. Therefore, the court *a quo* has held that to have continued the workman even beyond his last contractual engagement for six months and was allowed to work till

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April 12, 2013 was unfair because this practice was adopted only to deprive the workman of his matured rights under the Industrial Disputes Act, 1947 ("1947 Act") and other labour laws and flouting them which rights cannot be permitted to be squandered without legal and factual justification. The Labour Act has rightly reasoned that had the workman been relieved of his duty after the expiry of his first contractual period of employment on July 07, 2009 and was not re-employed then it could be said that the services had been terminated as a result of the stipulation in the contract and then the case would not have fallen in retrenchment/termination but under the exception in sub-section (bb) of section 2 (oo) of the 1947 Act since there was admitted violation of the pre-requisites in section 25-F of the 1947 Act. Relief has been granted by the Labour Act on these premises.

5. The only difference in CWP No.22877 of 2015 is that respondent Smt. Nirmla was employed as Sweeper in the same Civil Hospital. It may be noted that respondent-worker in CWP No.22848 of 2015 was placed like Vijay Kumar as Dhobi. The other difference is that the period of service in CWP No.22848 of 2015 is two years and in CWP No.22877 of 2015 is one and half years. But even in their cases the need for the post and its availability still exists as testified honestly by the witness produced by the management.

6. The contention of Mr. Bedi, however, is that in the cases of Sunita and Nirmla, the period of service is brief and, therefore, reinstatement should not follow mechanically or automatically. This plea is noticed and rejected in view of the authority of the Supreme Court in

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Jasmer Singh v. State of Haryana, (2015) 4 SCC 458. It is a case relating to the State of Haryana in a Government Department. There is a visible shift in the Supreme Court on the subject matter in a series of rulings which have to rule the roost a few of which are in **Deepali Gundu Surwase v. Kranti Junior Adhayapak Vidyalay,** (2013) 10 SCC 324 and more graphically in **Tapash Kumar Paul v. BSNL**, (2014) 15 SCC 313 and more recently in **Fisheries Department, State of Uttar Pradesh v. Charan Singh,** (2015) 8 SCC 150, not to mention the rest in the same line of thought while dealing with reinstatement and back wages as a result of illegal termination in labour laws as distinguished from service jurisprudence governed by statutory rules. In Charan Singh case the Supreme Court read Article 21 of the Constitution in awarding relief and excluded the principle of "equal pay for equal work" in case the termination is void ab initio for breach of law in sections 6-N and 6-W of the U.P. Industrial Disputes Act, 1947. The Court granted 50% back wages from August 22, 1975 till February 24, 1997 in addition to order of the High Court directing payment of full wages from February 24, 1997 to January 31, 2005. While the Supreme Court invoked Article 21 in aid of the hapless workman, the Hon'ble Bench quoted a passage from the Bombay slum dwellers case in **Olga Tellis v. Bombay Municipal Corporation**, (1985) 3 SCC 545 which reads:-

> *"32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of*

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their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the

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> *means of livelihood. That is the context in which it was said by Douglas, J. in Baksey v. Board of regents 347 US 442, 472,that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois (1877) 9 US 113 means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P AIR 1963 SC 1295=(1964) 1 SCR 332."*

7. I find no fundamental flaw of law or fact in the award of the Labour Court in these three petitions or any perversity or error apparent on the face of record which might vitiate the award and would dismiss them in limine.

(RAJIV NARAIN RAINA)
JUDGE

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