

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

Civil Writ Petition No.4281 of 2013

Date of decision: 17.12.2015

Piara

... Petitioner

Versus

the Presiding Officer, Labour Court, Ambala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Mayank Sharma, Advocate,
for the petitioner.

Mr.Gaurav Goel, AAG, Haryana.

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

RAJIV NARAIN RAINA, J. (Oral)

The petitioner served as a daily wage baildar-cum-mali in the Forest Department, Haryana from 1987 to 2006 when his services were terminated abruptly without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The necessary jurisdictional facts to maintain the claim before the Labour Court stand satisfied on record. The petitioner had put in 240 days of continuous and uninterrupted service in the preceding 12 calendar months preceding the date of termination. The dispute raised by the workman under Section 2-A of the Act led to conciliation proceedings which failed. The Conciliation Officer submitted his failure report on which the Government made a reference to the Labour

Court for adjudication of the dispute which reference has been declined and no relief has been granted to the petitioner. The reason which has prevailed in the mind of the Labour Court to non-suit the petitioner is that his entry into service was through the rear door and, therefore, his appointment was hit by the law in **Secretary, State of Karnataka v. Umadevi**; (2006) 4 SCC 1 [Umadevi (3)].

2. Since the appointment was against the constitutional scheme envisioned under Articles 14 and 16 of the Constitution of India, the petitioner could not take relief from the Labour Court, or so the court below thought in its wisdom. In the written statement filed by the Forest Department before the Labour Court, an objection was not taken that the entry into service of the petitioner was *de hors* the rules or was entertained through the back door and, therefore, was an illegal appointment to public service. In the absence of the pleadings, the Labour Court fell in error in going into the question of illegal appointment and applying the principles of **Umadevi (3)**. **Umadevi (3)** is a decision by the Constitution Bench of the Supreme Court guiding and cautioning the constitutional courts not to directly pass orders of regularization in cases of *ad hoc*, temporary, daily wage employees etc. who have come by the back door to public employment as this would destroy equality laws and prevent regular recruitment. With all respect the case is distinguishable, firstly; for the reason that it has been explained by the Supreme Court in its subsequent verdict in **Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana**; (2009) 8 SCC 556 holding that **Umadevi (3)** principle does not apply to labour law

adjudication. Secondly, unskilled menial jobs of daily wage baildars or daily wage hands is not employment in the sense of appointment to public post governed by rules of service and this class of labour rather stands outside the rule territory where the principles enshrined in the Industrial Disputes Act, 1947 alone apply to industrial adjudication which is governed by principles of special rights and are qualitatively different from service law jurisprudence evolved by superior courts. A plea by the State in defence of an action that the entry into service is against the constitutional scheme is not open to be taken for the first time in writ proceedings as observed in **Harjinder Singh v. Punjab State Warehousing Corporation**; (2010) 3 SCC 192. The position in this case is a bit different. Here the labour Court has embarked upon a journey which it is prohibited from doing that in the absence of pleadings no evidence can be entertained and, therefore, the impugned award cannot be sustained in the eye of law and has to be set aside.

3. It is noteworthy that it is the petitioner's case that he served from 1987 to 2006 whereas the Labour Court has not gone into this question and casually observed that the employment is from 1997 to 2006. However, the day and month is the same and obviously there appears to be a typographical error in the award which is of no moment. This Court takes it that the period of service is from 1987 to 2006 which is sufficiently long to consider grant of relief of reinstatement with continuity and full back wages. In the opinion of this Court this is an eminently fit case for grant of relief. The labour court misdirected itself in denying relief.

4. For the foregoing reasons, this petition is allowed and the impugned award is set aside since it suffers from apparent fundamental flaws of reasoning as discussed above and there are errors apparent on the face of the record which cannot be reconciled with the state of the prevailing law. The petitioner is directed to be reinstated to service with continuity and full back wages. The arrears of back wages be computed and paid to the petitioner within 3 months from the date of certified copy of this order and compliance report be placed before this Court for its perusal.

(RAJIV NARAIN RAINA)
JUDGE

December 17, 2015

Paritosh Kumar