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

Date of Decision: 10th December, 2015

+ **W.P.(C) 527/2007 & CM Nos. 1751/2014, 974/2007 & 3260/2014**

MANAGEMENT OF CPWD Petitioner

Through: Ms.Saroj Bidawat, Advocate

versus

ABDUL GAFFAR & ORS. Respondents

Through: Mr. Rajiv Aggarwal, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this writ petition under Article 226 of the Constitution of India, the petitioner impugns the award dated 07.03.2006 passed by Presiding Officer, Central Government Industrial Tribunal cum Labour Court-II whereby the action of the petitioner in terminating the services of the petitioners including one Jai Chand was held to be illegal and unjustified. The petitioners were held to be entitled for regularisation from the date of their initial engagement with all consequential benefits within one month. They were also awarded arrears of wages. Besides that, a sum of Rs.10,000/- was also awarded as cost.

2. Shorn of unnecessary details, factual matrix of the case is that Shri Abdul Gaffar was initially engaged in MRM Project, Nepal and Shri Saleswar Kamat was engaged in PWD ED-V on 29.03.1977 and 24.06.1981 respectively. Later, when the project work was completed both these workmen were transferred to the Mechanical and Workshop Division as Muster Roll workers. Some workers employed by the CPWD on daily wage basis filed two writ petitions being W.P.(C) No.59-60/1983 and 563-70/1983 titled Surinder Singh & Ors. vs. The Engineer in Chief, CPWD (1986) 1 SCC 639 wherein they prayed for regularisation and equal pay for equal work. Vide order dated 17.01.1986, the Supreme Court allowed the writ petitions and directed the respondents

herein to take appropriate action to regularise the services of all those workers who are in continuous service for more than six months. Pursuant to the passing of the aforesaid order, the management regularised about 8982 daily/muster roll workers who were engaged in different divisions of the department. However, the respondents were not regularised in their respective posts. As such, a demand notice was served upon the CPWD by the workmen calling upon the management to regularise their services. Thereafter, the petitioner wrote a letter to the respondents offering to regularise them in a lower post for which they were suitable and directed them to give their option for any lower post as per their qualifications in which they desire to be regularised. The respondents omitted to send any reply to the letter. Vide letters dated 04.07.2000 and 01.08.2000 again the respondents were asked to specify their option but the respondents refused to accept a lower post. Therefore, their services were terminated with effect from 30.08.2000.

3. A dispute was raised by the respondents pursuant to which the Ministry of Labour by its letter No. L-42012/209/2001 IR(CM-II) dated 24.10.2002 referred the following points for adjudication:

“Whether the action of the Executive Engineer, Mechanical and Workshops Division, Netaji Nagar, CPWD in terminating the services of Shri.Abdul Gaffar s/o Shri Mohd.Habib, Sr.Mechanic SD-I Division, R.K.Puram, Shri.Saleshwar Kamat s/o Shri Sukhdawala, Asstt. Mechanic, SD-II Division R.K.Puram and Shri. Jai Chand s/o Shri. Moolchand, Mason SD-II RR Zone Division VII, Poorvi Marg, Vasant Kunj, New Delhi w.e.f. 30.8.01 instead of regularizing their services is legal and justified? If not, to what relief they are entitled to?”

4. The workmen filed statement of claim stating therein that they were being treated as muster roll workers and paid their wages monthly. They had unblemished and uninterrupted record of service to their credit. They were treated as muster roll employees and were not allowed proper pay scale, facilities and privileges which were enjoyed by other regular and permanent employees although their working hours were identical to the regular employees of their category. The management did not take any steps for regularisation of services of the workmen and continued the exploitation of the workmen. A demand notice was served upon the Engineer in Chief, CPWD vide communication dated 08.01.2000 whereby the management was called upon to regularise the services of

the workmen in proper pay-scale and allowances from the respective initial dates of their joining and to pay them the difference of salary and wages on the principle of “equal pay for equal work”. When no action was taken by the management on the said demand notice, statement of claim was filed before the Conciliation Officer, Government of India but during the pendency of the conciliation proceedings, the management terminated the services of the workmen with effect from 30.08.2000 arbitrarily. Against the impugned termination of services, a complaint under Section 33A of Industrial Dispute Act, 1947 was also filed before the Conciliation Officer. But the same ended in failure because of non cooperative attitude of the management. It was alleged that the jobs against which the workmen were working are of permanent nature and are still continuing with the management. Employing persons on regular nature of job and treating them as monthly paid/muster roll workers and paying them lesser remuneration amounts to unfair labour practice, as provided in Section 2(ra) read with Item no.10 of Fifth Schedule of the Industrial Disputes Act, 1947 and sub-section 25T punishable under Section 25U of the Industrial Dispute Act, 1947. Even otherwise, the impugned termination of services is violative of Section 25 (g) and (h) of Industrial Dispute Act, 1947 read with Rules 76, 77 and 78 of the Industrial Dispute (Central Rules), 1957. Hence, it was claimed that the workmen were entitled to be regularised in service from the initial dates of their joining into the employment in proper pay-scale and allowances and they are entitled to be paid difference of salary for the muster roll period at par with their regular counterparts on the principle of “equal pay for equal work”.

5. The claim was contested by the management *inter alia* on the ground that the management tried its best to regularise the services of the workmen in lower categories as the workers were not having requisite qualifications and did not fulfil the eligibility criteria i.e, passing of trade test, however, the workmen did not reply to the same as such, after giving due notice, their services were terminated in accordance with Director General (Works), CPWD orders with effect from 30.08.2000. The workmen are not entitled for reinstatement as they themselves are responsible for their termination by not accepting the offer of appointment in lower category.

6. After considering the evidence led by the parties and the submissions made on behalf of both the parties, the Presiding Officer, Industrial Tribunal observed that

qualifications are to be considered at the time of initial appointment. The trade test should have been taken at the time of initial appointment. The eligibility criteria-trade test and requisite qualifications are not to be considered by the management after a lapse of 15-23 years. As such, the impugned award was passed observing that the workmen are entitled to be regularised from the date of their initial engagement and to the arrears of wages.

7. Feeling aggrieved, present writ petition has been filed by the management.

8. The submission of learned counsel for the petitioner is basically two-fold:

(i) The respondents were appointed as daily wager on muster roll. As per CPWD Manual, the requisite qualification for Assistant Mechanic is (1) trade certificate from a recognised vocational training institute (2) 1 year experience in operation and maintenance in a workshop or department dealing with Mechanical Plant. For Mechanics, the qualification is: (1) trade certificate from a recognised vocational training institute. (2) 3 years practical experience in a workshop/maintenance of mechanical plants. Since in the instant case the workmen were not having the requisite trade certificate from a recognised vocational training institute as such, they were not eligible to be regularised for the post of mechanic or Assistant Mechanic. However, taking a sympathetic view, they were offered regularisation to a lower post which was not acceded to by the workmen as such, there was no option but to terminate their services. Reliance was placed on *the Secretary, State of Karnataka vs. Umadevi* (2006) 4 SCC 1 in support of the submission that the workmen were not entitled for regularisation.

(ii) The Tribunal has gone beyond the terms of reference as such, the award is otherwise liable to be set aside.

9. Per contra, learned counsel for the respondents submits:

(i) The respondents-workmen were having unblemished career and their services were found to be satisfactory. The observations of Hon'ble Supreme Court in Umadevi's case are not applicable to Industrial Adjudication. Reliance was placed on a judgment passed by Division Bench of this Court in LPA No.755/2014 *Shri Ram Singh vs. The Management of CPWD* wherein substantially similar issue was involved and Division Bench held that the worker, though on muster roll and did not pass the trade test, were still entitled for regularisation.

(ii) Even if the workmen did not accept the offer of the management for regularisation at a lower post, the management was not competent to terminate the services of the workmen without complying with the provisions of Section 25 of the Industrial Disputes Act. Reliance was placed on *Santosh Gupta vs. State Bank of Patiala* AIR 1980 SC 1219.

(iii) Award passed by the Industrial Tribunal was as per terms of reference.

(iv) The scope of interference by this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India is very limited which can be exercised only if the finding of the Labour Court suffers from an error of jurisdiction or is vitiated by an apparent error of law which are lacking in the instant case. Hence, no interference is warranted. Reliance was placed on a judgment rendered by this Court in *W.P.(C) 7426/2001 MCD vs. Surender Kumar & Anr.*

10. The factual matrix of the case are undisputed:

(i) Shri Abdul Gaffar was initially engaged in MRM Project, Nepal on 29.03.1977 whereas Shri Saleswar Kamat was appointed on 24.06.1981 in PWD ED-V.

(ii) After the project work was completed, they were transferred to the mechanical and workshop division as muster roll workmen.

(iii) In the year 1983, several workers employed by petitioner-management on daily basis filed two writ petitions praying for their regularisation and equal pay for equal work. The writ petitions were allowed vide order dated 17.01.1986 directing the management to take appropriate action to regularise the services of all those workers who are in continuous service for more than six months.

(iv) About 8982 daily/muster roll workmen were regularised, however the respondents were not regularised on the ground that they lack requisite qualification prescribed under CPWD Manual.

(v) The workmen served a demand notice upon the Engineer-in-Chief, CPWD calling upon the management to regularise their services.

(vi) The management vide letter dated 22.05.2000 offered to regularise the respondents in a lower post as per their qualification which was not acceded to by the workmen.

(vii) Vide letter dated 30.08.2000, the services of the workmen were terminated.

11. Present case is squarely covered by the judgment delivered by Division Bench of this Court in **Ram Singh** (supra) so far as the relief regarding regularisation is concerned. In that case also, regularisation was not done on the ostensible ground of not having requisite qualification and passing trade test and reliance was placed on **Umadevi's** case. However, the Division Bench of this Court placed reliance on the latest judgment of Hon'ble Supreme Court rendered in **ONGC Ltd. vs. Petroleum Coal Labour Union & Ors.** 2015 (5) SCALE 353 where Hon'ble Supreme Court observed that the prohibition laid down in **Umadevi** does not apply to industrial adjudication. The relevant portion of this judicial pronouncement was reproduced with advantage:-

“11. On behalf of the workmen concerned, it was contended before the Single Judge of the High Court that the dispute falls within the jurisdiction of the Tribunal under the provisions of the Act and that the Tribunal had sufficient jurisdiction to adjudicate the dispute referred to it. It was further contended on behalf of the workmen concerned that they have been working on temporary basis from the year 1988 and continuing their services on temporary basis is an unfair labour practice on the part of the Corporation. Therefore, it was contended that the Tribunal was right in directing the workmen concerned to be regularised and that the law laid down in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : had no application to cases of industrial adjudication.

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27. Further, it is very clear from the facts that all the workmen concerned have got the qualifications required for their regularisation, except one of them and have been employed by the Corporation even prior to 1985 in the posts through various irregular means. The Tribunal has got every power to adjudicate an industrial dispute and impose upon the employer new obligations to strike a balance and secure industrial peace and harmony between the employer and workmen and ultimately deliver social justice which is the constitutional mandate as held by the Constitution Bench of this Court in a catena of cases. This abovesaid legal principle has been laid down succinctly by this Court in Bharat Bank Ltd. v. Employees [AIR 1950 SC 188], the relevant paragraph of the said case is extracted hereunder:

61. “We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the

*disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organisation on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. In describing the true position of an Industrial Tribunal in dealing with labour disputes, this Court in *Western India Automobile Assn. v. Industrial Tribunal* (1949) FCR 321 quoted with approval a passage from Ludwig Teller's well-known work on the subject, where the learned author observes that:*

'... industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements.'

The views expressed in these observations were adopted in its entirety by this Court. Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial tribunal and its determination is not a judicial determination in the proper sense of these expressions."

It has been further held by this Court in LIC v. D.J. Bahadur [(1981) 1 SCC 315] : as follows:

22. "The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counterproductive battles and the assurance of industrial justice may create a climate of goodwill."

Thus, the powers of an Industrial Tribunal/Labour Court to adjudicate the industrial dispute on the points of dispute referred to it by the appropriate government have been well established by the legal principles laid down by

this Court in a catena of cases referred to supra. Therefore, the Tribunal has rightly passed an award directing the Corporation to regularise the services of the concerned workmen.

28. Whether the appointment of the workmen concerned in the services of the Corporation is irregular or illegal?

31. In the case on hand, the workmen concerned were employed by the Corporation initially through contractors. Thereafter, on issuance of the Notification dated 8-12-1976 by the Central Government abolishing contract labour for the posts of watch and ward, dusting and cleaning jobs in the Corporation under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, the Corporation and the workmen concerned arrived at a settlement under Section 18(1) of the Act, wherein a cooperative society was formed in the name of “Thai Security Service Priyadarshini Indira Cooperative Society” for their welfare, thus dispensing with intermediary contractors. During the pendency of the sanction from the Central Government of the alleged “policy decision”, the workmen concerned were appointed directly from 13-1-1988 to 29-2-1988 and thereafter, they were employed continuously without written orders by the Corporation. It is the contention of the learned Senior Counsel on behalf of the Corporation that the services of the workmen concerned cannot be regularised as their appointment was originally and initially through contractors and thereafter, without following any procedure of selection and appointment as per the Recruitment Rules and therefore, the same is illegal by placing reliance on the decision of this Court in para 43 of Umadevi’s case (supra) . Further, this Court in Ajaypal Singh v. Haryana Warehousing Corpn. [(2015) 6 SCC 321] opined that when a workman is initially appointed in violation of Articles 14 and 16 of the Constitution of India, then the employer at the time of re-employment of the retrenched workman cannot take the plea that the initial appointment was in violation of the abovementioned provisions. The relevant paragraph of Ajaypal Singh case is extracted hereunder:

. “...The provisions of the Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi’s case. The issue pertaining to unfair labour practice was neither the subject-matter for decision nor was it decided in Umadevi’s case .”

The plea of the Corporation that the reason for not regularising the workmen concerned under the Certified Standing Orders of the Corporation is allegedly due to the fact that the appointment of the workmen concerned was made without following due procedure under the Recruitment Rules and that their appointments were illegal. This plea cannot be accepted by us in view of the legal principle laid down by this Court in the above decision, wherein it is clearly laid down that the Corporation cannot deny the rights of the workmen

by taking the plea that their initial appointment was contrary to Articles 14 and 16 of the Constitution.” (emphasis supplied)

12. Reference was also made to ***Umrula Gram Panchayat v. The Secretary, Municipal Employees Union & Ors.*** (2015) 4 SCALE 334 where Supreme Court has mandated that a person who has completed 240 days of continuous service becomes entitled to regularisation. Para 17 of the judgment reads thus:

“17. In view of the reasons stated supra and in the light of the facts and circumstances of the present case, we hold that the services of the concerned workmen are permanent in nature, since they have worked for more than 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record. Therefore, not making their services permanent by the appellant-Panchayat is erroneous and also amounts to error in law. Hence, the same cannot be allowed to sustain in law.”

13. It was further held that even the observations made by Hon’ble Supreme Court in Para 53 of ***Umadevi’s case*** helps the workmen which reads as under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan(supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

14. By relying upon these judgments, the Court observed as under:-

“18. So far as the aspect of trade test is concerned, it cannot be denied that the skills and expertise of a person who commenced work as a carpenter in 1972 would be different from a carpenter who may have received formal training and joined CPWD in the year 1990 or after the year 2000. Recognizing the aspect of difference of skills by virtue of differential training as well as by passage of time, the Division Bench of this court in a judgment reported as 2013 IAD (DELHI) 779 S.K. Chaudhary & Ors. v. NCT of Delhi considered the question as to what should be the process to subject the employees to be regularized who have served for long as daily wager/ ad hoc employee/ casual employee. In para 16 of the pronouncement, this court noted that neither the judgment in Uma Devi nor in a later judgment reported as 2010 VIII AD S.C. 661 in State of Karnataka and others v. M.L. Kesari and Ors, the court had rendered any opinion on this aspect.

19. It may be noted that the adjudication in S.K. Chaudhary related to appointments to the posts of Junior Engineers with the Delhi State Industrial and Infrastructure Development Corporation. These writ petitioners had been appointed on contract basis or on muster roll basis as Work Assistants/Technical Supervisors. Some of the writ petitioners were later on inducted as Junior Engineers on ad hoc basis and Assistant Engineers on ad hoc basis. The Court was concerned with the manner in which the writ petitioners deserved to be considered for the purposes of their regular induction into services in para 25, 26, 27 and 28 which may usefully be extracted and read thus:

“25. Now, making petitioners compete with fresh graduate Engineers whose theoretical knowledge, being immediately out of college, would be most unfair.

26. Noting that neither in Umadevi's case nor in M.K.Kesari's case the Supreme Court rendered an opinion as to what process of regularization should be adopted in cases where initial appointment was irregular and not illegal, we expand upon this subject by opining that the process through which irregular appointments need to be subjected to convert the same into regular appointments has to be a selection process devised where only the irregularly appointed employees are uniformly tested with respect to the minimum theory; keeping in view the experience gained by them. In other words, the test has not to be theoretical but an application based selection process.

27. Before issuing the formal direction we need to note that whereas the DSIDC correctly understood the law declared by the Supreme Court in Umadevi's case, much prior to when the opinion was pronounced in Umadevi's case inasmuch as on September 19, 2002

it made a request to the Government of NCT of Delhi to permit it, as a one-time measure, to regularize the services of people working as Engineers with it whose initial appointment was irregular but against vacant sanctioned posts, vide its response dated February 20, 2003 the Government of NCT of Delhi refused to accord the necessary approval.

28. Since appointment of the petitioners was irregular and not illegal, in that, their existed vacant posts of Engineers in DSIDC when petitioners were inducted as Engineers and the petitioners were qualified, we dispose of the writ petition confirming the impugned decision pronounced by the Tribunal but modify the same with reference to direction issued to advertise the posts and effect selection through DSSSB : by substituting the direction that the respondents would devise a suitable methodology to subject the writ petitioners to an induction test which would be designed with reference to application and not theory. Age relaxation benefit would be granted to the petitioners. As noted by us the fact not in dispute is that the petitioners possess the necessary educational qualifications.

28. Such petitioners who clear the selection process, which would be limited to the writ petitioners, would be inducted permanently against the posts they are currently holding.

20. The principle laid down by the Supreme Court in the year 2013 would squarely apply to a daily wage employee or a muster roll worker as the appellant at the relevant time when respondent claim to have proposed to conduct the trade test. It is not pointed out to us that the respondents had proposed any special test because of the fact that the petitioner was rendering satisfactory services since the year 1972. Clearly, no special methodology of testing was suggested to which the appellant could not have been subjected keeping in mind the long term of satisfactory services rendered by the appellant. In view of above the continuation of the appellant as a muster roll employee points out towards an arbitrary and unfair approach of the respondent.”

15. Therefore, the Division Bench directed regularisation of the workman and payment of wages.

16. In ***Bhagwati Prasad vs. Delhi State Mineral Development Corporation*** (1990) 1 SCC 361 also, the petitioners were daily rated workers working in the respondent's corporation and sought relief for regularisation of their services and for payment of equal wages at par with regular employees of the respondent performing

the same or similar duties. They were appointed on daily wages between 1983 and 1986 and they had been working ever since. The claim was resisted by the corporation and one of the ground was that the petitioners were not having requisite qualification so as to entitle them to be confirmed in the respective posts held by them. Repelling the contention, it was observed as under:-

6.....The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation.....”

17. Moreover, similarly situated other employees who were employed by the Central Public Works Department on daily wage basis and who were working for several years filed the W.P.(C) No.59-60/1983 and 563-70/1983 titled **Surinder Singh & Anr.** (supra) demanding same wages as permanent employees who were employed to do identical work. They had claimed that even if it is not possible to employ them on permanent basis for want of a suitable number of posts, there is no reason whatsoever why they should be denied equal pay for equal work. Allowing the writ petitions following observations were made by Hon'ble Supreme Court which deserves to be noticed:-

“.....The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouths of the State and State Undertakings. We allow both the writ petitions and direct the respondents, as in the Nehru Yuvak Kendras case (Supra) to pay to the petitioners and all other daily rated employees, to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs.1000/- towards their costs. We also record

our regret that many employees are kept in service on a temporary daily-wage basis without their services being regularised. We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months.”

18. Pursuant to these directions, number of employees were regularised, however, the respondents were not regularised on the same post on the ground that they were not having the requisite qualification.

19. In view of the ratio of these judgments, the qualification of trade certificate from a recognised vocational training institute was required to be seen at the time of initial entry into the service. Undisputedly, petitioners were appointed between the period 1977 to 1982 and had gained sufficient experience in the discharge of duties. Practical experience for such a considerable period in the same department for which they were seeking regularisation could not have been ignored on the ground that they lack the prescribed trade qualification. Moreover, the respondents were in continuous service with the petitioner for a period of 23 and 18 years respectively. In terms of the above position, the workmen were entitled to regularisation of their services as they had worked continuously for a period much beyond 10 years, as noted in the aforesaid para of **Umadevi**.

20. There is another aspect of the matter. Even if the workmen were not having requisite qualification and did not opt for regularisation on a lower post that itself did not empower the management to terminate their services in contravention of the provisions of Industrial Disputes Act. According to the workmen, the termination of their services was retrenchment within the meaning of expression Section 2(oo) of the Industrial Disputes Act, 1947 since it did not fall in any of the three exception cases mentioned in Section 2(oo). Since there was retrenchment, it was bad for non-compliance with the provisions of Section 25F of the Industrial Disputes Act.

21. Section 25F prescribes that no workman employed in any industry who has been in continuous service for not less than one year shall be retrenched by the employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid at the

time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or any such authority as may be specified by the appropriate Government by notification in the official Gazette. There is a proviso to Clause (a) which dispenses with the necessity for the notice contemplated by the clause if the retrenchment is under an agreement which specifies the date for the termination of service.

22. The expression retrenchment is specially defined by Section 2(oo) of the Act and is as follows:

“2(oo) ‘retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health;”

23. A perusal of Chapter VA dealing with layoff and retrenchment goes to show that the manifest object of these provisions is to compensate the workman for loss of employment as to provide them the wherewithal to subsist till they find fresh employment. The nature of retrenchment compensation has been explained in ***Indian Hume Pipe Co. Ltd. v. The Workmen*** [1960] 2 S.C.R.32 as follows:

“As the expression ‘retrenchment compensation’ indicates it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigour of hardship which retrenchment inevitably causes. The retrenched workman is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. At the commencement of his employment a workman naturally expects and looks forward to security of service spread over a long period but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment.”

24. In ***Santosh Gupta*** (supra) the services of the workmen were terminated due to failure of the workmen to pass the test which would have enabled her to be confirmed in the service. It was held by Hon’ble Supreme Court that the discharge of the workmen on

the ground that she did not pass the test which would have enabled her to be confirmed was retrenchment within the meaning of Section 2(oo) and, therefore, the requirement of Section 25F had to be complied with. The order of the Presiding Officer, Central Government Industrial Tribunal cum Labour Court, New Delhi was set aside and the appellant was directed to be reinstated with full backwages.

25. Things are substantially similar in the instant case. Without complying with the provisions of Section 25 of the Act, the services of the workmen could not have been terminated in the manner it has been done by the management. Under the circumstances, the findings of the learned Labour Court regarding the action of the Executive Engineer, Mechanical and Workshop Division, CPWD in terminating the services of the workmen to be illegal does not warrant interference.

26. As regards last limb of the argument of learned counsel for the petitioner that the learned Industrial Tribunal has gone beyond the terms of the reference, a bare perusal of the terms of reference reflects that the Labour Court was required to adjudicate whether the action of the Executive Engineer in terminating the services of the workmen instead of regularising their services is legal and justified? If not, to what relief they are entitled to thereof? While answering the reference, the learned Presiding Officer replied the reference by holding that the action of the Executive Engineer in terminating the services of the workmen is neither legal nor justified. Secondly, they were entitled to be regularised and for arrears of wages. While doing so, it cannot be said that the Industrial Tribunal has gone beyond the scope of the reference which warrants setting aside of the award.

27. Moreover, the settled position of law in respect of interference by the writ courts under Article 226 of the Constitution of India in matters of this nature is that a writ court exercises its power of judicial review well within certain parameters.

28. In *M/s Atlas Cycle (Haryana) Ltd. V Kitab Singh*, (2013) 12 SCC 573, the Hon'ble Supreme Court referred to the decision in *Surya Dev Rai v Ram Chander & Ors.*, (2003) 6 SCC 675 where Supreme Court summarized various circumstances under which the High Court can exercise its jurisdiction under Articles 226 and 227 of the Constitution as under:

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel

inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

29. In **K.V.S.Ram vs. Bangalore Metropolitan Transport Corporation** AIR 2015 SC 998 while dealing with the powers of this Court in exercise of Article 227 of the Constitution of India. It was observed as under:-

11..... In our considered view, in exercise of its power of superintendence Under Article 227 of the Constitution of India, the High Court can interfere with the order of the Tribunal, only, when there has been a patent perversity in the orders of tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted. In our view, when the Labour Court has exercised its discretion keeping in view the facts of the case and the cases of similarly situated workmen, the High Court ought not to have interfered with the exercise of discretion by the Labour Court.

12. In Syed Yakoob v. K.S. Radhakrishnan AIR 1964 SC 477, the Constitution Bench of this Court considered the scope of the High Court's jurisdiction to issue a writ of certiorari in cases involving challenge to the orders passed by the authorities entrusted with quasi-judicial functions under the Motor Vehicles Act, 1939. Speaking for the majority of the Constitution Bench, Gajendragadkar, J. observed as under: (AIR pp. 479-80, para 7)

"7...A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the

procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts Under Article 226 to issue a writ of certiorari can be legitimately exercised."

13. *In the case of Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd. and Anr. (2004) 6 SCC 434, it was held as under:*

"15. We find the judgment and award of the labour court well reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power Under Article 227 of the Constitution of India to annul the findings of the labour court in its award as it is well settled law that the High Court cannot exercise its power Under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the Appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329 with regard to the limitations of the High Court to exercise its jurisdiction Under Article 227, it was held in para 49 that: (SCC p. 348)

"49. (m)...The power of interference Under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."

It was also held that: (SCC p. 347, para 49)

"49. (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence Under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it."

30. In view of the aforesaid decisions, it is clear that in exercise of its powers under Article 226 of the Constitution, this Court is not to act as an appellate court. An award can only be set aside if it is based on no evidence or contrary to any substantive law or it is in violation of principles of natural justice or is vitiated by a manifest or apparent error of law. No such issue has been established in the instant case. The court will not countenance the picking of holes here and there in the award on trivial points and attempting thereby to frustrate the entire adjudication process before the Industrial Adjudicator on hypertechnical grounds as is being sought to be done by the petitioner in the present case.

31. The Industrial Tribunal, however, has ordered the regularisation of the workmen from the date of their initial engagement with all consequential benefits. The narration of the facts, as detailed above, reflect that Abdul Gaffar was appointed as far back as in 1977 and Saleswar Kamat was appointed in the year 1981. however it was only in the year 1983 that some of the workers employed by CPWD filed the writ petition claiming regularisation and equal pay for equal work. Vide order dated 17.01.1986, directions were given to the management to take proper steps to regularise the services of those workers who were in continuous service for more than six months. Thereafter, the process of regularisation started. According to the workmen, a demand notice dated 08.01.2000 was sent by them to the Engineer in Chief, CPWD for regularisation of their services. Thereafter, they were offered regularisation on a lower post. On their refusal, their services were terminated with effect from 30th August, 2000. That being so, the

workmen were entitled for regularisation of service with effect from 08.01.2000 when this demand was made by them.

32. It has further come on record that during the pendency of this writ petition, respondent no.1 Abdul Gaffar has been superannuated in the year 2008 while respondent no.2 has expired on 10.03.2013.

33. It is a matter of record that pursuant to the application under Section 17B of the Industrial Disputes Act filed by the respondents petitioner was directed to pay the last drawn wages or minimum wages whichever is higher to respondent no.1 i.e., Abdul Gaffar from the date of passing of the award dated 07.03.2006 till 31.01.2008 i.e. the date of superannuation and to respondent no.2 i.e., Saleswar Kamat from the date of passing of award i.e., 07.03.2006 till disposal of the petition.

34. Pursuant to these directions respondent no.1 was paid a sum of Rs. 1,61,128/- for the period from 07.03.2006 till 31.01.2008 whereas respondent no.2 was paid a sum of Rs.2,83,130/- for the period 07.03.2006 till 30.09.2010 and thereafter he was reinstated in service on 28.10.2010 and was being paid a sum of Rs.5,166 per month.

35. In view of the above, the impugned award dated 07.03.2006 is modified to the extent that:

(i) The respondents would be entitled to regularisation of service with effect from January, 2000.

(ii) So far as payment of wages is concerned, the respondent no.1 would be entitled to entire arrears of wages of a regular employee from the date of his termination from service till 31.01.2008 after adjusting the amount which has been paid to him under Section 17B of ID Act whereas the legal heirs of respondent no.2 would be entitled to same amount subject to the adjustment of the amount which has been paid to him under Section 17B of ID Act and wages paid to him after reinstatement in service till 10.03.2013.

(iii) The petitioner shall also effect computation in terms of the above directions within a period of six weeks from today and communicate the same to respondent no.1 and legal heirs of respondent no.2 forthwith. The payments in terms of the computation shall be effected within a further period of eight weeks thereafter.

(iv) The petitioner shall effect computation of the retiral benefits of the respondents within a period of six weeks and payment thereof shall be effected within a further period of eight weeks thereafter.

36. The writ petition stands disposed of in the above terms. Pending applications, if any, also stand disposed of.

(SUNITA GUPTA)
JUDGE

DECEMBER 10, 2015
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