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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 8th September, 2015.

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LPA 755/2014 & CM No. 19211/2014

SHRI RAM SINGH

..... Appellant

Through : Mr. Rajiv Aggarwal, Mr. Sachin
Kumar, Advocates.

versus

THE MANAGEMENT OF CPWD

..... Respondent

Through : Mr. R.V. Sinha, Advocate.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. The appellant assails the judgment dated 24th September, 2012, passed by learned Single in W.P.(C) 4441/2006. By this impugned judgment, the learned Single Judge set aside an Industrial Award dated 23rd January, 2004, holding that the action of the CPWD in not regularizing the services of Ram Singh as Carpenter w.e.f. his date of appointment on 1st January, 1972 was not justified.

2. With the consent of the parties, the appeal is taken up for consideration today. We have heard learned counsels for the parties at length who have carefully taken us through the records.

3. The essential facts giving rise to the instant appeal are noted

hereinafter. Mr. Ram Singh, appellant herein was admittedly in employment with the CPWD, respondent herein as Carpenter since 1st January, 1972. It is not disputed that he maintained an unblemished and uninterrupted record of service throughout his career. The appellant was treated as a daily wager/muster roll worker and was paid only fixed wages under the Minimum Wages Act, which stood revised from time to time.

4. Aggrieved by non regularization of his services and deprivation of the appropriate pay scale and allowances, the appellant raised an industrial dispute which came to be referred as I.D. No. 147/90 before the Presiding Officer, Central Government, Industrial Tribunal: Cum Labour Court –II, Rajendera Bhawan, Ground Floor, Rajendra Place, New Delhi vide its letter dated 18th December, 1990, which referred the following dispute for adjudication :-

“Whether the action of management of CPWD New Delhi in not regularizing the services of Shri Ram Singh, Carpenter w.e.f. 01.01.1972 is justified? If not, to what relief the workman is entitled to?”

5. Before the Industrial Tribunal, there was no dispute to the essential facts on which the claim of the appellant was premised. Additionally, the learned counsel for the respondent stated that the recruitment rules were made for the appointment of the carpenters according to which 50% of the appointments to the post of carpenters were effected by direct recruitment and 50% by promotion. It was stated that the appellant had been asked to

appear in the trade test but he did not do so, for which reason, he was not regularized. In support of its submission, the respondent had relied upon a letter in which it was claimed that the appellant had refused to accept the same. The record of the case is silent so far as the date on which such a letter was at all tendered to the appellant. Even the details of this communication is not pointed out even before us.

6. It is an admitted position that the appellant discharged continuous services as a Carpenter w.e.f. 1st January, 1972 and that the services of the appellant were also found satisfactory. No complaint at all in respect of the working of the appellant had been placed on record. The respondent has also admitted that it used to assign the work as a carpenter to the appellant which he has regularly and uninterruptedly discharged.

7. On an elaborate consideration of the matter, the Industrial Tribunal was of the view that, though the appellant was working w.e.f. 1st January, 1972, but as the matter came to be referred to the Industrial Adjudicator only on 14th December, 1990, therefore, the appellant-Ram Singh could be considered for relief only from 14th December, 1990. Additionally, for the reason that appellant had not undertaken the test so far as arrears of salary were concerned, he would not be entitled to full wages but only to 50% of the back wages with usual increments. The Industrial Award was accordingly passed in these terms on 23rd January, 2004.

8. Aggrieved by the relief granted, the respondents assailed the same by way of the writ petition being W.P.(C) No.4441/2006. Placing reliance on

the pronouncement of the Supreme Court in the judgment reported at (2006) 4 SCC 1 in *The Secretary, State of Karnataka and Ors. v. Uma Devi and Ors.*, this writ petition came to be accepted by the learned Single Judge. Unfortunately, the observations of the Supreme Court in para 53 of Uma Devi were not placed before the learned Single Judge, which resulted in passing of the impugned order. We may usefully extract these observations, which reads thus :-

“ 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.”

9. It is an admitted position that in the present case, even till the year 1990, when the appellant had raised an industrial dispute, he had been working with the respondent since the year 1972. This means that the appellant was in continuous service with the respondent for a period of over 18 years. In terms of the above position, the appellant had to be held entitled to regularization of his services as he had worked continuously for a period way beyond 10 years as noted in Para 53 of ***Uma Devi***.

10. By 2006, when *Uma Devi* was pronounced, this appellant had more than twenty eight years of uninterrupted satisfactory service behind him. We may note that it is not the respondent's contention before us that the appellant was irregularly or illegally appointed at the relevant time, when he was initially inducted into services. This was an accepted mode of engaging

services in positions as carpenter.

11. The stand of the respondent as well, was that services of muster roll workers who joined before the year 1985 and passed the trade test as per CPWD Manual were regularized by the Superintendent (E) of CPWD.

12. The respondents also do not contend that the petitioner does not have the necessary qualification.

13. Mr. Rajiv Aggarwal, learned counsel appearing for the appellant/ Ram Singh has also drawn our attention to a recent pronouncement of the Supreme Court reported as **2015 (5) SCALE 353** in **ONGC Limited v. Petroleum Coal Labour Union & Ors.** in support of his submission that the prohibition laid down in **Uma Devi** does not apply to industrial adjudication. We may usefully extract the relevant portion of this judicial pronouncement, which reads thus :-

“ 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 : 2006 SCC (L&S) 753] 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: (AIR p. 209, para 61)

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 [(1949-50) 11 FCR 321] quoted with approval a passage from Ludwig Teller's well-known work on the subject, where the learned author observes that: (FCR p. 345)

'... 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 : 1981 SCC (L&S) 111], as follows: (SCC p. 334, para 22)

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 (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . Further, this Court in Ajaypal Singh v. Haryana Warehousing

Corpn. [(2015) 6 SCC 321 : (2014) 13 Scale 636]
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 [(2015) 6 SCC 321 : (2014) 13 Scale 636] is
extracted hereunder: (SCC p. 329, para 17)

17. “...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 (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . The issue pertaining to unfair labour practice was neither the subject-matter for decision nor was it decided in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .”

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)

14. Though there is no plea of irregularity in the appellant's initial appointment, but the above enunciation of law only supports the appellant's claims and entitlement. On the same aspect in another recent decision of Supreme Court reported as **(2015) 4 SCALE 334** in ***Umrula Gram Panchayat v. The Secretary, Municipal Employees Union & Ors.***, it has been observed as under :-

14. *Therefore, the learned single Judge as well as the Division Bench of the High Court have exercised the power under Articles 226 and 227 of the Constitution of India and have rightly held that the Labour Court has jurisdiction to decide the industrial dispute that has been referred to it by the Dy. Commissioner of Labour, Ahmedabad. Reliance has been placed upon the decision of this Court in the case of **Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmchhari Sanghatana**, wherein it has been held thus:*

"32.The power given to the Industrial and Labour Courts under [Section 30](#) is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer."

Further, reliance has been placed upon the decision of this Court in the case of [Durgapur Casual Workers Union v. Food Corporation of India](#), wherein it has been held thus:

"19. Almost similar issue relating to unfair trade practice by employer and the effect of decision of Umadevi (3) in the grant of relief was considered by this Court in [Ajaypal Singh v. Haryana Warehousing Corporation in Civil Appeal No. 6327 of 2014](#) decided on 9th July, 2014. In the said case, this Court observed and held as follows:

20. The provisions of [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.

21. We have noticed that *Industrial Disputes Act* is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees...."

15. Thus, in the light of the above referred cases of this Court, it is amply clear that the judgments and orders of the High Court and the Award passed by the Labour Court are reasonable and the same have been arrived at in a just and fair manner.

16. The reliance placed by the learned senior counsel for the appellant upon the decision of this Court in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.* does not apply to the fact situation of the present case and the same cannot be accepted by us in the light of the cogent reasons arrived at by the courts below.

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.

18. For the reasons stated supra, we dismiss the appeals and direct the appellants to treat the services of the concerned workmen as permanent employees, after five years of their initial appointment as daily wage workmen till they attain the age of superannuation for the purpose of granting terminal benefits to them.”

15. In view of above, it is accordingly observed that the Supreme Court has therefore, carefully created a special class of cases, wherein, the claim of unfair labour practice of continuing daily wagers/ad hoc employment/casual workers for long periods and regularization has withstood scrutiny by an Industrial Adjudicator under the Industrial Disputes Act, 1947.

16. Learned counsel for the appellant has drawn our attention to the para 17 of *Umrala*, wherein, the Supreme Court has mandated that a person who has completed 240 days of continuous service, becomes entitled to regularization. The 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.”

17. In the present case, we are not talking of a few days or 240 days but a period of 43 years i.e. since the year 1972, when the petitioner has rendered satisfactory, blemishless and uninterrupted services to the respondent. To say the least, the denial of regular appointment to the appellant has resulted in depriving him of regular pay scale, emoluments as well as leave benefits etc to the appellant which tantamounts to an extremely unfair labour practice and exploitation of the services of the poor worker.

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 I AD (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 decided 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.

(emphasis by us)

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.

21. By the Industrial Award dated 23rd January, 2004, the Industrial Adjudicator had denied the appellant, the benefit of regularization w.e.f. 1990 and only 50 % of the regular wages have been found admissible to the appellant.

22. The record would show that as per the facts on record, the appellant had filed an affidavit dated 10th October, 1997 before the Industrial Adjudicator which is placed at page 83 of the present record. This affidavit of the appellant suggests that he was aged 45 years on that date. As a result, the appellant would be around 63 years of age at present, therefore, if the appellant had been in service, he would have superannuated at the age of 60 years in the year 2012.

23. The appellant did not assail the award dated 23rd January, 2004 by any further adjudication. In these circumstances, we are of the view that the Industrial Award dated 23rd January, 2004 is fair and does not suffer from any illegality and deserves to be sustained. We are not aware of the exact date of birth of the appellant. In the interest of justice, the appellant shall be entitled to payment of wages upto 31st December, 2012, it being the last date of the year as he would have superannuated at the age of 60 years in the year 2012.

24. In view of above, we direct as follows:-

(i) The judgement dated 24th September, 2012 in W.P.(C)

No.4441/2006 is hereby set aside. The Industrial Award

dated 23rd January, 2004 in I.D. No. 147/90 shall stand restored.

(ii) It is held that the appellant would be entitled to regularization of services w.e.f. 18th December, 1990.

(iii) So far as the payment of wages is concerned, the appellant would be entitled to 50% of the wages of a regular employee including all the monetary and non-monetary benefits w.e.f. 18th December, 1990 till 23rd January, 2004 (the date of passing of Industrial Award). It is further directed that w.e.f. 23rd January, 2004 till 31st December, 2012, the appellant would be entitled to full wages and salary including all the monetary and non-monetary benefits as any regular employee is entitled to.

(iv) The respondent shall effect computation in terms of above directions within a period of six weeks from today and communicate the same to the appellant forthwith. The payments in terms of the computation shall be effected within a further period of four weeks thereafter.

(v) The respondent shall effect computation of the retiral benefits of the appellant also within a period of six weeks and the payments thereof shall be effected within a further period of four weeks thereafter.

(vi) The appellant shall be entitled to cost of Rs.25,000/- which shall be paid with the above amounts.

25. The appeal stands allowed in the above terms.

Dasti to parties.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

SEPTEMBER 08, 2015

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