

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

Date of decision: 29.03.2016

CWP No.14260 of 2012

Mandeep Singh

...Petitioner

Vs.

Punjab Urban Development Authority & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Jigyasa Tanwar, Advocate, for the petitioner.

Mr. Harit Sharma, Advocate, for the respondents.

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

RAJIV NARAIN RAINA, J.

1. This petition deserves to be allowed for the reasons to follow. Before going to test reason, it would be useful to state briefly the necessary facts shorn of details.

2. The petitioner was appointed as Ledger Keeper by Punjab Urban Development Authority (PUDA) to serve its Ludhiana office. This was in May, 1997. In the year 1999, the petitioner joined co- petitioners in a common petition bearing CWP No.15407 of 1999 filed before this Court seeking regularization of services and for grant of pay and emoluments as drawn by other regular employees. The writ petition was pending when the petitioner applied for ex-India leave in March, 2000, which was sanctioned. He came back to work in May, 2002, but was not allowed to rejoin service. As a result,

his services were deemed to be terminated by an oral arrangement without any orders passed. Feeling aggrieved by the cessation of service, the petitioner raised a dispute by serving a notice of demand for justice on PUDA on 05.07.2002 claiming reinstatement to service with all consequential benefits for illegal termination without following the due procedure prescribed in Section 25F of the Industrial Disputes Act, 1947 (for short 'the Act'). While the dispute was raised, the grievance was not redressed by PUDA which turned a deaf ear to the notice and the demand. Since a copy of the demand notice was served on the Labour Department, Punjab, the conciliation officer assigned the task to bring about a settlement on failure to arrive at a reproachment, the appropriate Government made a reference to the area Labour Court to adjudicate the dispute whether the termination was legal and valid and if not, what relief was the workman entitled to. Reference No.203 of 2003 was registered and on determination of the case on evidence answered the reference in favour of the petitioner. The Labour Court held the petitioner a 'workman' by definition. The finding returned was that the petitioner had proceeded on ex-India leave for 2½ years with permission and had returned to India before the expiry of the period of leave i.e. on 16.05.2002. The Labour Court held that the termination was brought about without notice, charge-sheet or inquiry. In striking off the petitioner's name from the rolls of PUDA due to absence from duty amounted to retrenchment. The termination was held to be illegal and the same was set aside by the Labour Court, Ludhiana vide Award dated 18.10.2011 (Annex P-4). All this time, the petitioner had been litigating before the Labour Court from outside. The award however was not implemented till 20.03.2012 due to intervening litigation testing the correctness of the award.

3. Aggrieved by the award, PUDA had approached this Court by way of CWP No.3973 of 2012 in which notice of motion was issued on

02.03.2012. Reinstatement was not stayed, but the award of back-wages was. However, the writ ultimately failed on 17.12.2013 before the learned Single Judge. Intra court appeal carried in LPA No.289 of 2014 was dismissed on 19.12.2014. Still dissatisfied, PUDA approached the Supreme Court in SLP No.8344 of 2015, which petition was disposed of vide order dated 11.03.2016. Back-wages awarded by the Labour Court were modified to a lump sum payment of Rs.1.5 lakhs in lieu of 40% back-wages. Thereafter, finality attached to the litigation with respect to the illegal termination. The petitioner returned to employment with PUDA.

4. However, the petition filed for regularization and for equal pay for equal work remained pending in which the petitioner was amongst the petitioners at Serial No.14. That petition was disposed of on 04.03.2003, when the petitioner was out of service. PUDA was directed to consider the case of the available petitioners for payment of minimum wages and for regularization of services in accordance with the judgments passed by this Court in a case of PUDA itself in CWP No.13088 of 1999 titled 'Pargat Singh & others Vs. Punjab Urban Development Authority & others' which was decided on 21.11.2000. In pursuance of the orders passed on 04.03.2003, the services of the other petitioners who had completed three years of service by 21.01.2001 were regularized with retrospective effect from 20.10.2003 (vide Annex P-8).

5. The petitioner could not obviously get the benefit of the order of regularization since he was litigating for reinstatement and consequential benefits. With the success of the litigation before the Labour Court and reinstatement granted to the petitioner, he could only in law be returned to the original position held on the date of termination and to be granted the monthly salary admissible to him on the day of disengagement. Since the petitioner was on daily-wages at the time of termination his monthly salary worked out to

Rs.120.35 paisa per day, which comes to Rs.3614/- per month but his co-petitioners whose services had been regularized were in regular pay scales as Ledger Keepers and were getting Rs.35,000/- per month as on the date of the filing of the petition in 2012.

6. The present petition has been filed with the following prayers:

1. The petitioner be granted equal pay for equal work.
2. He should be granted continuity of service from the date of termination, which will bring with him the right of regularization based on all the effective result of the orders passed by this Court in CWP No.15407 of 1999.
3. The Court directed consideration, but did not pass directions of regularization and left it to PUDA to consider the cases. PUDA acting on its own passed orders in favour of the co-petitioners from which the petitioner was left out because of termination. The petitioner should also have the benefit admissible to all the petitioners in CWP No.13088 of 1999. His services should be regularized from the date when the services of his juniors were regularized i.e. with effect from 2003.

7. These prayers are based on unfair and unreasonable discrimination and violation of equality principles in Article 14 of our Constitution. Could he be denied equality before the law, equal protection and dissimilar, hostile and invidious discriminatory treatment? After all, the petitioner's reinstatement awarded by the Tribunal was upheld till the Supreme Court while only the

monetary benefits were modified by a lump sum amount. The continuity of service awarded by the Tribunal along with reinstatement held the ground.

8. Since the petitioner draws his rights from industrial law principles, the law in Secretary, State of Karnataka & others Vs. Umadevi & others, (2006) 4 SCC 1 (Umadevi-3) would not apply, as addressed by Mr. Harit Sharma in his submissions while appearing for PUDA. The contention is not acceptable since the ruling in Umadevi-3 stands distinguished and explained in Maharashtra State Road Transport Corporation Ltd. Vs. Casteribe Rajya Parivahan Karamchari Sanghalana, (2009) 8 SCC 556 which culls out the ratio of *Umadevi-3* and holds it a verdict not applicable to industrial workers or 'workmen' by definition, to whom the protective rights flow from the Industrial law. The petitioner cannot be made to pay the price of length of trial before the Labour Court, as thought fit by the Labour Court as he was not at fault in prolonging the litigation over which he could have no control. Continuity given by the Labour Court and upheld by the superior courts would obviously run from the back date.

9. Per contra Ms. Tanwar appearing for the petitioner relies on the decision of the Supreme Court in Umrala Gram Panchayat Vs. The Secretary, Municipal Employees Union & others, 2015 (3) SCT 104 which she canvasses holds her in good stead.

10. In similar circumstances of rights coming forth from Labour Court dispensations awarding reinstatement and continuity of service in the background of regularization has been dealt with in great detail in 'Khajjan Singh Vs. State of Haryana', (2015) 2 RSJ 135: (2015) 1 S.C.T. 604 where principles in *Umadevi case* have been distinguished by the subsequent decision of the Supreme Court in *Casteribe* (supra). It would thus be a travesty of

justice if the petitioner who is similarly placed in PUDA among Ledger Keepers; who shares full duties and responsibilities of a Ledger Keeper, receives only 10% of the regular pay of a Ledger Keeper while performing the duties and responsibilities in all its degrees twenty-four seven without any difference between him and his compatriots. The petitioner is entitled to the pay scale from the date of reinstatement as a result of the award of the Labour Court passed on 18.10.2011. This is for the reason that his rights were declared on that date of termination which order was set aside as illegal. The effect of which is that the petitioner is deemed to have continued in service as though the order was never passed. However, on the date of the award, the co-petitioners were already in receipt of full pay and allowances of the post of Ledger Keeper since their services had been and regularized retrospectively. The position is that the order passed by the Supreme Court modifying back-wages to lump sum payment operates prior to the award and not thereafter.

11. Then Mr. Sharma argues that the appointment of the petitioner was through the back-door and therefore the benefit of continuity given by the Labour Court will not make a material difference as it will not change the nature and character of the employment obtaining at the initial appointment. He submits that employees who have been appointed illegally and not in terms of the procedure envisaged in the constitutional scheme of appointment to public service have no right to be made permanent having accepted the employment with open eyes and they cannot be permitted to import theories which defeat the basic requirement of public employment to be in consonance with Articles 14 and 16 of our Constitution. It is also contended that the petitioner cannot invoke the theory of legitimate expectation for claiming confirmation and permanence on the post when the appointment to the post was made by not following procedure for selection. However, Mr. Sharma

while he chooses this dangerous line of reasoning does not substantiate his plea on the ground that such an objection was taken before the Labour Court or before the High Court and in the Supreme Court. It was not taken in defence. A new plea is not open to examination in writ jurisdiction, *See Harjinder Singh v. Punjab State Warehousing Corporation*, (2010) 3 SCC 192. The contention is without substance and is rejected.

12. Had the services of the petitioner not been wrongly terminated he would have continued in service like his co-petitioners and received the same treatment inevitable. There is thus no reasonable classification between the two classes of cases to justify different treatment.

13. In Hari Nandan Prasad Vs. Food Corporation of India & another; (2014) 7 SCC 190, the Supreme Court dealt with unreasonable discrimination arising out of labour court awards in the matter of regularization and held:

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

14. As a result of the above discussion, this petition presents sufficient merit to prevent unfair discrimination and is accordingly allowed. Therefore, a mandamus is issued to the respondents to consider regularizing the services of the petitioner with effect from 2003 from the date his juniors/colleagues and co-petitioners were regularized as Ledger Keepers. From a somewhat different angle and another applicable legal principle [both leading to the same

conclusion re: relief] a writ of mandamus is in addition issued to the respondents to grant equal pay for equal work and pay at par with juniors/colleagues in CWP No.15407 of 1999 with effect from the date of the award dated 18.10.2011 when his rights were declared by court for the first time. He would however take consequential benefits notionally from the date of termination/disengagement. However, the petitioner will not be entitled to any interest on the arrears of wages/salary calculated as above which are directed to be paid within three months from the date of supply of the order in certified copy.

29.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE