

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1500 of 2014

Date of Decision: 07.04.2016

Balwinder Singh

... Petitioner

Versus

Industrial Tribunal, Patiala
and others

... Respondents

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

Present: Ms. Sukhmani Tiwana, Advocate,
for Mr. Vikas Singh, Advocate,
for the petitioner.

Dr. Puneet Kaur Sekhon, Addl. AG, Punjab.

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 case is yet another instance of misapplication of the law in Secretary, State of Karnataka v. Umadevi, (2006) 4 SCC 1 and the subsequent decisions of the Supreme Court on the same line of reasoning in Haryana State Electronics Development Corporation Ltd. v. Mamni, 2006 (2) LLJ 744 (SC). The law has been misapplied by the Presiding Officer, Labour Court, Patiala in her award dated May 29, 2013. The aforesaid cases dealt with regularization of services of persons illegally or irregularly appointed to public service in departure of the principles in Articles 14 & 16 of our Constitution relating to appointments to public service in the scheme envisioned by the Constitution. The ratio in *Umadevi-3* is that neither would the Supreme Court nor the High Court issue directions to regularize the

services of such appointments which are made *de hors* the rules. Umadevi-3 was explained in Maharashtra State Road Transport Corporation Ltd. vs. Casteribe Rajya P. Karmchari Sanghatana, (2009) 8 SCC 556 as inapplicable to labour law and the protections afforded by the Maharashtra labour laws akin to the Industrial Disputes Act, 1947 (“the Act”) while dealing with *pari materia* provisions of the Maharashtra MRTU & PULP Act. The Labour Court has applied *Umadevi-3* and *Mamni* cases even after returning a finding of fact that the termination brought about on October 03, 2002 was illegal. The finding came in the background that the respondent-management failed to lead any evidence in support of its case and its evidence was closed by order dated October 26, 2009. The Labour Court held that the evidence led by the workman remained unrebutted and unchallenged. The evidence of the workman established that he had worked continuously as a Sewadar/Peon in the office of the Divisional Forest Officer, Fatehgarh Sahib from August 02, 1999 to October 03, 2002. The evidence established the petitioner had completed 240 days in the last calendar year preceding the date of termination. The termination was brought about without complying with the mandatory pre-conditions in section 25-F of the Act inasmuch as no notice, wages in lieu of notice, or compensation was paid at the time of retrenchment and no reasons were assigned justifying termination. Even in the face of these findings of fact returned by the Labour Court it has chosen to deny reinstatement and has awarded compensation of a meager amount of Rs.20,000/- in lieu of reinstatement and back wages.

2. The reason for denying relief is three-fold. Firstly, the

termination took place in the year 2002 and a period of 11 years had elapsed in the litigation resulting in the award. Secondly, the Government of Punjab has banned fresh recruitment. Thirdly, the reference has remained pending for nine years in adjudication and as a result of the combination of three reasons the Labour Court has deemed it fit to award compensation and deny reinstatement. The award is under challenge.

3. Ms. Sukhmani Tiwana appearing for the workman has raised several issues which would tend to show that the impugned award suffers from fundamental flaws in its reasoning and, is therefore, not liable to be upheld and instead deserves to be set aside and the relief prayed for deserves to be granted.

4. She argues on the strength of the written statement filed by the respondents that an objection was not taken that the appointment was illegal or irregular. All that respondents tried to show was that the appointment was purely temporary and subject to availability of work and the availability of the workman. There was no sanctioned post. The workman was neither issued any appointment letter nor any termination order. He was a casual labour deployed on DC rates. Nor had he completed the requisite 240 days of service. The workman led evidence contra and established that his presence was marked on muster rolls but not on the attendance register. The muster rolls were sufficient according to Ms. Tiwana to count the period of service having been rendered continuously.

5. The young learned counsel argues that when objection was not taken as to the nature of the entry into service then the question could not have been gone into for the first time by the Labour Court to non-suit the

petitioner and in this, the Labour Court failed to apply the law in Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192.

Neither the Labour Court nor the High Court in such circumstances would be justified in entertaining a new plea raised on behalf of the employer for the first time during the course of the arguments without case pleaded and overturn an otherwise well reasoned award passed by the Labour Court and deprive the workman of what may be the only source of his sustenance and that of his family. The situation here is converse. The Labour Court has defeated a just claim by accepting an argument based on *Umadevi-3* and, therefore, Ms. Tiwana is correct when she contends that the award suffers from a fundamental flaw in misapplication of the law and judicial authority by the Labour Court when it should have applied the law in *Casteribe* explaining principles laid down in *Umadevi-3*. It is urged that the Labour Court relied on *Umadevi-3* by misdirecting itself even without looking at the written statement filed by the management or the fact that the respondent had failed to lead evidence and had instead invited closure of its evidence.

6. Ms. Tiwana then cites Krishan Singh v. Executive Engineer, (2010) 3 SCC 637 which is a case where the Supreme Court dealt with the issue of reinstatement of a workman and distinguished *Umadevi-3* observing in paragraphs 21 and 22 of the report as follows:-

“21. In the present case, the respondent has not taken any stand before the Labour Court in his objections that the post in which the workman was working was not sanctioned or that his engagement was contrary to statutory rules or that he was employed elsewhere or that there was no vacancy. In the absence of any pleadings,

evidence or findings on any of these aspects, the High Court should not have modified the award of the Labour Court directing reinstatement of the appellant with 50% back wages and instead directed payment of compensation of Rs.50,000 to the appellant.

22. *The decision of this Court in State of Karnataka Vs. Umadevi cited by the counsel for the respondent relates to regularization in public employment and has no relevance to an award for reinstatement of a discharged workman passed by the Labour Court under Section 11-A of the Act without any direction for regularization of his services.”*

7. In Devinder Singh vs. Municipal Council, Sanaur, (2011) 6 SCC 584, the Supreme Court held that the mode of recruitment, mode of payment are irrelevant once a person is proven to be a workman. If the termination is illegal and in violation of section 25-F of the Act ordinarily reinstatement with continuity of service and full back wages would follow consequentially.

8. The other reason assigned for denying reinstatement by the Labour Court has hardly any foundation to stand on inasmuch as length of litigation or that the reference remained pending for a decade is no ground to decline reinstatement to a workman if reinstatement is justified. The long pendency of reference proceeding is not any fault of the workman. This reason has been excluded from relevant consideration by a weight of judicial opinion which requires hardly any elaboration. A litigant cannot be punished on account of law's delays. No man pursuing legitimately his rights in Courts can be punished by reason of long delay in adjudication to which he has not contributed. The Labour Court has not returned a finding that the workman contributed to delay by his conduct or inactions. In the absence of such a finding, the Labour Court fell in grave error in using this

line of reasoning to deny reinstatement. The Labour Court should have been conscious that it is under bounden duty to declare the rights of the parties either from the date the cause of action arises or on the date of reference or date of demand notice, as the case may be, with justification. The work of the Labour Court cannot be approved in determining the rights by finding that the termination was illegal and then denying reinstatement to service with continuity and back wages by offering a measly Rs.20,000/- as compensation. Even if this were a case for denial of reinstatement, which it is not, even then the amount of compensation awarded is wholly inadequate and shockingly disproportionate. Such small sums of compensation in this day and age may erode the majesty of the law administered by Labour Courts and would tend to bring it to disrepute among the litigating public. Litigating workman may lose faith in the system if such a dispensation is upheld. If this practice were allowed to continue in Labour Courts as I have found in far too many cases than I would have liked to see; the justice delivery system will become questionable and might bring it to hatred, ridicule and contempt of the law on award of compensation in industrial adjudication. I find substance in the submissions of Ms. Tiwana on all counts that the award is not sustainable in the eyes of law as it suffers from perversity and irrationality which vitiate it.

9. In the year 2013 when the award was made there was a great deal of law existing on quantum of financial relief only waiting to be found where courts were disinclined to award reinstatement and many benchmarks are available on amount of compensation. Even a quick search on Google would have thrown up a huge body of case law to be guided by. Hardly any

sincere effort was made by the Presiding Officer to research the issue when reputed online journals have been made available to the subordinate judiciary as an instrument of empowerment and acquainting with the law. Not even any mastery was required on the simple question of relief of money to be appropriate to the cause. It is another matter that this is not a case for compensation in lieu of reinstatement. Moreover, Labour Courts and Tribunals must ever display in their awards a research oriented approach. Everything should no longer be left to the will of counsel alone who may or may not cite the relevant law on the subject. The duties of a Presiding Officers Labour Courts and Tribunals have grown manifold by the exponential growth of judge-made law which if not read in their ratios and properly applied to facts may result in denial of justice, although it may seem unwittingly. There must be a spirit of inquiry and reform.

10. There can be hardly any iota of doubt that the Labour Court award suffers from legal infirmities which vitiate it because the reasoning is not sound. In Mohan Lal v. Management, Bharat Electronics Ltd., AIR 1981 SC 1253 the Supreme Court observed as follows:-

“Where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be, in service with all consequential benefits, namely, back wages in full and other benefits.”

11. The principle has been bolstered before *Mohan Lal* in pathfinder rendition of the law on subject matter in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., (1979) 2 SCC 80 and more recently reiterated in Deepali Gundu Surwase v. Kranti Junior

Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324 etc. and many other ruling of the Supreme Court which justify reinstatement with full back wages when the termination is held to be illegal and ab initio void.

12. Dr. Mrs. Puneet Kaur Sekhon, learned Additional Advocate General, Punjab, appearing for the respondents has not been able to make any effective inroads to destruct the contentions advance on behalf of the petitioner for the Court to take a different view in the matter other than what is proposed. She has no answer that State adduced no evidence contra in the court *a quo* and instead got its evidence closed by order and made no effort thereafter praying for setting aside the order.

13. For the foregoing reasons, this petition is allowed. The Labour Court award when it declares the termination illegal is upheld. However, the relief part is quashed with the modification that the petitioner would be entitled to reinstatement with continuity of service and full back wages from the date of demand notice served on the respondents on October 17, 2003, which brought the dispute into existence which was referred for adjudication. The amount of compensation of Rs.20,000 awarded by the Labour Court will no longer be treated as compensation and instead the sum is made costs of litigation payable to the petitioner, over and above the pecuniary fallout of the order.

(RAJIV NARAIN RAINA)
JUDGE

07.04.2016
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