

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 21.07.2016

CWP No.3584 of 2013

Mala Ram

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjiv Gupta, Advocate, for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

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

RAJIV NARAIN RAINA, J.(ORAL)

Admittedly, while the petitioner was litigating before the Labour Court against his order of termination from service, his more fortunate colleagues, who continued in service were regularised by the Department vide orders at Annex P-2. The Labour Court award came in favour of the petitioner and the termination was held to be illegal, which resulted into reinstatement with continuity of service. The award was pronounced on 05.02.2007 in Reference No.127/2000. The result of reinstatement would be that the termination of employment never happened and he would be deemed to have continued in service by the fiction of law.

In case, persons junior to the petitioner were regularised by the Department without Court intervention, then it becomes an obligation of the Department to accord similar treatment to the petitioner and regularise his services from the date when juniors were regularized to avoid victimization and unfair labour practice. The legal position has been explained and discussed from the standpoint of unreasonable discrimination and the decision in Secretary, State of Karnataka & others Vs. Umadevi & others, (2006) 4 SCC 1 [CB] (*Umadevi-3*) would not come in way of this Court in issuing directions in conformity with the equality principles within Article 14 of our Constitution.

Mr. Sanjiv Gupta supports his case with the judgment of the Supreme Court delivered in Malathi Das (Retd.), now P.B.Mahishy & others Vs. Suresh & others, (2014) 13 SCC 249, wherein the Supreme Court has discussed the issue after noticing the Constitution Bench decision in *Umadevi-3*. Still further, reliance is placed on the decision in Khajjan Singh Vs. State of Haryana & others, ILR 2014 P&H 363, which order has been upheld in a large number of LPAs arising out of the judgment of the single judge.

However, Ms. Shruti Jain Goel, learned AAG, Haryana submits that SLP is pending in the Supreme Court and the contempt proceedings initiated by the petitioners therein before this Court in those cases have been ordered to be stayed. Even assuming that the decision of this case should be held up to await the decision of the Supreme Court even then the principle

laid down in Hari Nandan Parsad Vs. FCI, 2014 (2) SCT 234 (SC) will continue to operate as the controlling statement of law empowering this Court to pass such orders as would prevent continued violation of Article 14 of our Constitution. Equality before the law is the foundational principle of the rule of law.

As a result, this petition is allowed. A direction is issued to the respondents to consider regularising the services of the petitioner with effect from the date his juniors were regularised, with all consequential benefits. In case the question arises as to availability of vacancy, it will have to be examined from the date when the juniors were regularised and not from the current position. Therefore, to ensure that parity of treatment is made effective, the respondents may device ways of adjusting the petitioner even if it has to create a supernumerary post with retrospective effect by taking away one post from the lot of future recruitment. If there is any difficulty faced by the State, then it is directed that in any case the petitioner will be treated as notionally regularised from the date his juniors were handed down orders of regularization and continue to serve as regular hands. The cases of the persons further junior to the petitioner from the due dates may be considered in the light of Section 25 G of the Industrial Disputes Act, 1947.

21.07.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE