

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1159 OF 2005

L.P. Tiwari, S/o Shri Dwarika Prasad Tiwari, aged about 33 years, R/o Imalibhatha, Sarkanda, Ward No.45, Sarkanda, Bilaspur, District Bilaspur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Jan Shakti Niyojan, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. The Director, Employee and Trainee, Mahila Polytechnic, Bairan Bajar, Raipur (C.G.)
3. The Joint Director, Employment and Training Regional Office, Industrial Training Institute, Bilaspur, District Bilaspur (C.G.)
4. The Principal, Model Industrial Training Institute, Koni, Bilaspur (C.G.)

... Respondents

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- Mr. Jitendra Pali, Advocate, for the Petitioner.
 - Mr. J.K. Gilda, Advocate General, for the Respondents.
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Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Hon'ble Shri Justice Sanjay Agrawal

C A V ORDER

Reserved on : 11/07/2017

Delivered on : 31/08/2017

Per, P. Sam Koshy, J.

1. The present Full Bench had been constituted on a reference being made by the Division Bench, vide order dated 05.04.2010. The issue which has been referred to this Full Bench is, whether the principles laid down by the Division Bench of this Court in the case of **Bhagwat Prasad Yadav v. State of C.G. & Others¹** are contrary to the principles laid down by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others v. Umadevi (3) and others²** and also in the case of **Mineral Exploration Corporation Employees' Union v. Mineral Exploration Corporation Ltd. and another³**. Further, whether the petitioner is entitled to get parity with the case of Bhagwat Prasad Yadav (supra).

1 W.P. No. 3928/2000, decided on 18.4.2006.

2 2006 (4) SCC 1

3 2006 (6) SCC 310

2. Before venturing into the merits of the terms and reference, it would be appropriate to briefly pen down the factual matrix of the case that led to the reference being made. The petitioner in the instant case was initially appointed at the Modal Industrial Training Institute, Koni, Bilaspur on 24.07.1993. The appointment was as a daily wage worker and the appointment was for a fixed period of 89 days. The appointment was made after due consideration by a committee constituted by the Collector, Bilaspur. The name of the petitioner was duly sponsored from the District Employment Exchange. Though his initial appointment was for 89 days, he continued to work with the respondents for long uninterruptedly and the engagement of the petitioner for 89 days got continuously extended without any break.

3. In due course of time, the petitioner's services were regularized in the department vide order dated 05.11.1999 as Class-IV employee in the pay-scale of 2550-55-2660-60-3200. The petitioner's services were placed under one year probation period and since then he continued to work as a regular employee of the department. However, vide instructions, Annexures P-2 & P-7 with the writ petition, dated 31.03.2000 and 15.02.2000, it was ordered by the respondents that the services of the petitioner is no longer required as per the instructions received by the State Government, which had directed to immediately discontinue the services of **all those daily wage employees** who were engaged subsequent to 31.12.1988.

4. The said order of termination issued against the petitioner was subjected to challenge under Section 19 of the Administrative Tribunals Act by the petitioner, vide O.A. No.210/2000. The Raipur Bench of the State Administrative Tribunal rejected the application of the petitioner on 07.03.2000, holding that since the petitioner was an employee of ITI, which is an industry as per the provisions of Industrial Disputes Act, the Tribunal does not have jurisdiction to entertain the said application and thus the Tribunal rejected the application for want of jurisdiction. It is this order which has been subjected to challenge in the present writ petition.

5. It is pertinent at this juncture to mention that along with the present petitioner there was another identically placed person, that is Bhagwat Prasad Yadav, who too was appointed under the same employer in the same fashion in the year 1988. The said employee Bhagwat Prasad Yadav who was also initially appointed as Daily Wager, was later on regularized like the petitioner and in similar fashion was removed by the respondents in compliance to the same government instructions which were used for discontinuing the services of the petitioner in the present case.

6. Bhagwat Prasad Yadav had also filed a petition before the State Administrative Tribunal assailing the same order, where his case was registered as O.A. 209/2000, whereas the case of the present petitioner before the Tribunal was registered as O.A. No.210/2000. The two original applications came up for hearing on the same date and the same order was passed in both the cases dismissing the applications for want of jurisdiction. Bhagwat Prasad Yadav challenged the order of the Tribunal as has been done by the present petitioner and the petition of Bhagwat Prasad Yadav was registered as W.P. No.3928/2000. Bhagwat Prasad Yadav's case came up for hearing before the Division Bench of this Court on 18.04.2006 on which date the Division Bench of this Court allowed the writ petition, directing the respondents to reinstate the petitioner in service with all consequential benefits.

7. It is pertinent to mention that the Division Bench while deciding the case of Bhagwat Prasad Yadav took a stand that the case of Bhagwat Prasad Yadav would not come within the ambit of the circulars of the State Government directing removal of daily wage employees for the simple reason that on 02.06.1998, the services of the said Bhagwat Prasad Yadav stood regularized by the respondents in the pay-scale of 750-945 and after regularization, the petitioner ceases to be a daily wage employee any longer and therefore his services could not have been terminated invoking the circulars of the State Government treating him as a daily wage employee. The

judgment of the Division Bench of this Court in the case of Bhagwat Prasad Yadav was subjected to challenge before the Hon'ble Supreme Court vide Special Leave to Appeal (Civil) No.709/2007 and the Hon'ble Supreme Court vide its order dated 05.01.2007 dismissed the special leave petition of the State. The said judgment of the Hon'ble Supreme Court also is available on the records of the writ petition of Bhagwat Prasad Yadav. Unfortunately, the present case could not be filed and listed along with the case of Bhagwat Prasad Yadav and it came up for hearing at a later stage.

8. When the matter of the present petitioner came up before the Division Bench it had its own reservation in following the precedent laid down by the Division Bench of this Court in the case of Bhagwat Prasad Yadav. Relying upon the decision passed by the Hon'ble Supreme Court in the case of Uma Devi (3) (supra) as well as in the case of Mineral Exploration Corporation Employees Union (supra), the Division Bench vide its order dated 05.04.2010 ordered for constituting a larger Bench to decide as to whether the principles laid down in the case of Bhagwat Prasad Yadav are not contrary to the principles laid down by the Apex Court in the case of Uma Devi (3) (supra) as well as in the case of Mineral Exploration Corporation Employees Union (supra), leading to the constitution of this Larger Bench.

9. In the landmark decision in the case of **Olga Tellis & Others v. Bombay Municipal Corporation & Others**⁴, the Hon'ble Supreme Court in very categorical terms dealing with Article 21 and comparing it with the right to livelihood held that, *"The sweep of the right to life conferred by Article 21 is wide and far reaching. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. Right to work is the most precious liberty that man possesses. It is most precious liberty because, it sustains and enables a man to live and the right to life thus is a precious*

4 1985 (3) SCC 545

freedom. Life means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed”.

10. At this juncture, it would also be relevant to refer to the case of **Harjinder Singh v. Punjab State Warehousing Corporation**⁵, wherein in paragraph 21 referring to the powers of the High Court under Article 226/227 of the Constitution it was held as under:

“**21.** Before concluding, we consider it necessary to observe that while exercising jurisdiction under Article 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues..”

11. Keeping the aforesaid ratio of law laid down by the Hon'ble Supreme Court, now we may consider the judgment of the Hon'ble Supreme Court rendered in the case of Uma Devi (3) (supra). The judgment in the case of Uma Devi was primarily deciding the scope of interference by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India for issuance of a writ of mandamus for a daily wage employee to be made permanent in an appropriate post in the government department. The claim of the workmen seeking permanency was essentially based on the fact that they have been continued in employment or engaged in the work for a significant length of period and therefore they are entitled for being absorbed. In the case of Uma Devi (3) (supra), in addition to the scope of the High Court under Article 226 of the Constitution of India in respect of grant of a relief of permanency/regularization, it also dealt with those claims where the daily wagers have sought for a relief of absorption/regularization even if they are not working against a sanctioned post and even in the absence of they

5 2010 (3) SCC 192

possessing requisite qualification etc. In a nutshell, the Hon'ble Supreme Court while dealing with the case of Uma Devi (3) (supra) had concentrated on those categories of employees who were shown on the rolls of the State Government to be daily wagers who had been engaged by the respondents without undergoing any process of selection or were engaged without following the recruitment rules that were applicable in the respective departments of the State Government.

12. Likewise, in the case of Mineral Exploration Corporation Employees Union (supra), the said judgment also arose on a demand being made by the union seeking for regularization and for regular pay scale of the workers engaged on daily basis with the management of Mineral Exploration Corporation Limited. An industrial dispute was raised which was allowed and thereafter the High Court had set aside the award granting regularization. It is this order of the High Court which led to the filing of the special leave petition before the Hon'ble Supreme Court. The basic issue in the said case also, like in the case of Uma Devi (3) (supra), revolved around the set of workers engaged on daily wages and who had claimed for regularization. Unlike the aforesaid situation, both in the case of Uma Devi (3) (supra) as also in the case of Mineral Exploration Corporation Employees (supra), the petitioner in the present case was initially appointed in the year 1993. The appointment of the petitioner was made after his name was sponsored from the District Employment Exchange and his candidature was duly considered by the committee constituted by the Collector and in due course of time the services of the petitioner had also been regularized with effect from 05.11.1999 in a regular pay scale of a Class-IV employee.

13. Another pertinent fact which has to be borne in mind is that the circulars which have been made applicable by the respondents for terminating the services of the petitioner are circulars which were issued much subsequent to the petitioner being regularized in the services of the respondents. Exhibit P-5 enclosed with the writ petition would also reveal that the petitioner had been working against the sanctioned vacant post of a

Class-IV employee before he was regularized in the services of the respondents. Furthermore, the regularization was done with the full knowledge, consent and approval of the higher authorities in the department. Another question which may crop up for discussion is, whether the services of the petitioner could have been terminated giving the circulars of the State Government a retrospective effect as the circulars which have been relied upon are circulars have been issued by the State Government much after the petitioner was regularized. The Hon'ble Supreme Court in the case of **P. Tuls Das & Others v. Govt. of A.P. & Others**⁶ held that the circular or rule or any statutory provision including the rules framed under Article 309 of the Constitution of India cannot be given retrospective effect taking away the right which had been accrued in favour of an employee. In paragraph 14 of the said judgment, it has been held as under:

“14. ... Consequently, we are unable to agree that the legislature could have validly denied those rights acquired by the appellants retrospectively not only depriving them of such rights but also enact a provision to repay and restore the amounts paid to them to the State. The provisions of the Act, though can be valid in its operation "no futuro" cannot be held valid insofar as it purports to restore status quo ante for the past period taking away the benefits already available, accrued and acquired by them...”

14. Now, we may come to the judgment of the Division Bench of this Court in the case of Bhagwat Prasad Yadav v. State of Chhattisgarh & Others, decided on 18.04.2006 in Writ Petition No. 3928/2000. A perusal of the record of the writ petition of Bhagwat Prasad Yadav would reveal that the facts of the said case were identical to the facts of the present case, inasmuch as, the initial engagement of Bhagwat Prasad Yadav with the respondents was in a similar manner; the nature of work discharged by the two was similar; both had been regularized in the services of the State Government in due course of time and later on both were terminated from the services applying the same circular. Moreover, both the petitioner in the instant case and the said Bhagwat Prasad Yadav, challenged the order of termination before the State Administrative Tribunal where the case of the present petitioner was registered as O.A. No. 210/2000 and the case of Bhagwat Prasad Yadav was

registered as O.A. No. 209/2000. Both the original applications were dismissed on the same date applying the same analogy of want of jurisdiction. They both had challenged the order of the Tribunal before the High Court by separate writ petitions. The writ petition of Bhagwat Prasad Yadav was entertained by the Division Bench and stood allowed vide its order dated 18.04.2006. It would be relevant at this juncture to refer to paragraph 3 of the said judgment of the Division Bench, on the basis of which the writ petition of Bhagwat Prasad Yadav was allowed.

“3. We are of the considered opinion that the Circular of the Government has no application to the case of the petitioner. It is true that a direction was issued by the Government to terminate the services of all daily wagers appointed after 31.12.1998 but for the regularization of the services of the petitioner with effect from 2.6.1988, the above Circular could have been applied to the case of the petitioner also. It needs to be noticed that before the Circular was issued, the petitioner's services were regularized with effect from 2.6.1988 granting him regular pay scale also. It is trite to state that regularization of services created a vested right in the petitioner to continue in the service subject to terms and conditions of rules governing the service. Therefore, the 4th respondent merely on the basis of Circular ought not to have terminated the services of the petitioner. Secondly, it needs to be noticed that if it was the case of the respondents that the regularization of the services of the petitioner with effect from 2.6.1988 was irregular or illegal, in that event the petitioner should have been notified about the same and he should have been given a reasonable opportunity to have a say in the matter and only after conducting required enquiry, the 4th respondent ought to have terminated the services of the petitioner. It is not the case of the respondents that such a procedure was followed in the instant case before terminating the services of the petitioner. In that view of the matter, the impugned action on the part of respondents in terminating the services of the petitioner on the basis of the Circular cannot be sustained for utter violation of principles of natural justice, fair play in action. The cardinal principle that the affected should be appraised is totally violated by the respondents/State authorities”

If we look at the finding of the Division Bench in the case of Bhagwat Prasad Yadav, it would reveal that the finding of the Division Bench in paragraph 3 squarely fits to the case of the petitioner herein.

15. Another aspect which cannot be lost sight of is the fact that the judgment in the case of Bhagwat Prasad Yadav had been subjected to challenge before the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 709/2007 (CC No. 9855/2006). The said special leave petition came up for hearing before the Hon'ble Supreme Court on 05.01.2007 that is much

after the judgment in the case of Uma Devi (3) (supra) as also the judgment in the case of Mineral Exploration Corporation Employees Union (supra) had been pronounced and published. In spite of the two judgments having already been published, the Hon'ble Supreme Court had not thought it proper to interfere with the finding of the Division Bench of this Court and had dismissed the special leave petition of the State Government, thereby affirming and giving a stamp of approval to the finding of the Division Bench in spite of the judgments of the Hon'ble Court referred to in the order of reference.

16. Now coming to the question of equity also we must not ignore the fact that the facts of the present case and the facts of the case of Bhagwat Prasad Yadav are similar and almost identical. It would be highly unfair if one petition similarly placed is allowed and the another petition identically placed is held to be devoid of merits.

17. In view of the aforesaid discussions, we have no hesitation in reaching to the conclusion that so far as the case of the present petitioner is concerned, the judgment of the Division Bench of this Court in the case of Bhagwat Prasad Yadav, decided on 18.04.2006 in W.P. No. 3928/2000, would come to the aid of the present petitioner and this Bench also would like to hold at this juncture that since the judgment of the Division Bench of this Court in the case of Bhagwat Prasad Yadav (supra) has also got the stamp of approval of the Hon'ble Supreme Court much after the judgments in the case of Uma Devi (3) (supra) and in the case of Mineral Exploration Corporation Employees Union (supra) were published, it cannot be said to be contrary to the principles laid down by the Hon'ble Supreme Court in the afore two judgments. As a consequence, we hereby hold that the petitioner is entitled to get the relief on parity with the case of Bhagwat Prasad Yadav.

18. Thus, we answer the reference holding that we do not find the judgment in the case of Bhagwat Prasad Yadav to be contrary to the principles laid down by the Hon'ble Supreme Court in the two judgments referred to in the order of reference. We also do not intend to send the matter

back to the Division Bench for passing a final order and instead this Bench itself proceeds to decide the petition and hold that the termination of the petitioner was bad in law.

19. The writ petition therefore deserves to be and is accordingly allowed. The respondents are directed to reinstate the petitioner in services with continuity of service. However, since the petitioner is out of employment for a considerable long period that is for about 17 years time, considering the financial implications which the respondents will incur we hold that the petitioner shall be entitled for 50% of back wages with all consequential benefits, pecuniary or otherwise.

Sd/-	Sd/-	Sd/-
(Thottathil B. Radhakrishnan)	(P. Sam Koshy)	(Sanjay Agrawal)
Chief Justice	Judge	Judge