

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23073 of 2012

Date of Decision: 18.01.2017

Rajbir Singh

... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-
cum-Labour Court, Rohtak and others

... Respondents

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

Present: Mr. M.K. Verma, Advocate,
for the petitioner.

Mr. Inderesh Goyal, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.

1. Mr. Goyal has produced office order dated January 16, 2017 passed by Sunder Lal, HFS, Divisional Forest Officer, Jhajjar in pursuance to the directions issued by this Court on November 28, 2016. The interim order dated November 28, 2016 deserves to be reproduced to take the case forward:-

“Pursuant to the order dated 15.09.2016, respondents have filed an affidavit in which they have admitted that two persons who are appointed similar to the petitioner, whose services have been regularised by virtue of purport in one case and in another cases with reference to the policy. Therefore, the respondents are directed to consider the petitioner's claim for regularisation at par with the other persons whose names are cited in the affidavit. Such action shall be taken within a period of four weeks from today and place the same before the Court on the next date of hearing.

Adjourned to 18.01.2017.”

2. It would be apposite to reproduce the earlier interim order dated September 15, 2016 crystallizing the issue which reads as under:-

“Mr. Sunder Lal, HFS, Divisional Forest Officer (T), Jhajjar is present and filed his affidavit. Same is taken on record.

From perusal of the affidavit, it is evident that on 21.07.2000 Rohtak Division record for the year April 1985 to March 1996 has been destroyed. DFO, Jhajjar contends that record for the period from February, 1984 to March 2008 was destroyed on 16.11.2013. The reference was filed in the year 1999 therefore, the respondent should have been careful in keeping the record when the matter are pending consideration before the Court. For want of record the petitioner's right cannot be decided.

Admittedly, the petitioner was posted as a Mali from 1982 to 1997. In view of these facts and circumstances, learned State counsel is directed to verify whether the persons working on daily wages from 1982 to 1997 service of such employees have been regularized in the State of Haryana in any of the department or not, before the next date. To that extent, the Divisional Forest Officer is directed to file an affidavit.

Adjourned to 10.11.2016.

Personal presence is dispensed with till further order.”

3. The specific query of the Court was that when the petitioner was litigating before the Labour Court against his order of termination whether daily wagers like him who may have been retained in service were regularized or not. What the Court was looking for was a case of discrimination even after the Labour Court had denied reinstatement after recording a finding that there was non-compliance of Section 25-F of the Industrial Disputes Act, 1947 (“1947 Act”) and had moulded the relief by granting monetary compensation in lieu of reinstatement in a meager sum of ₹ 10,000/- against which award the petitioner is before the Court challenging the same and seeking the directions that it may be set aside as

suffering from errors. He prays for awarding him reinstatement with continuity of service and full back wages.

4. To deny reinstatement, the Labour Court has applied the law in Jagtar Singh v. Haryana State Agriculture Marketing Board and another, 2009 (4) RSJ 367, Shiv Kumar v. Presiding Officer, Labour Court, Patiala and others, 2009 (4) RSJ 47, Haryana State Cooperative Apex Bank Ltd. Chandigarh v. Presiding Officer, Labour Court, U.T. Chandigarh and others, 2008 (4) RSJ 282, CWP No.19596 of 2007 titled *Krishna W/o Shri Ram Kumar v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar and another* and CWP No.19606 of 2007 titled *Phuli W/o Sh. Mange Ram v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar and another* decided on 14.08.2008.

5. The Labour Court has held that the appointment of the petitioner was not in consonance with the statutory rules and was in violation of Articles 14 & 16 of the Constitution of India and, therefore, he could not be reinstated. It has been recorded in para.5 of the award that the testimony of the petitioner appearing as his own witness WW-1 remained uncorroborated that he had worked from April 01, 1996 to December 16, 1997. His deposition before the Labour Court in Reference No.42/1999 reads as follows:-

“Stated that I was appointed by the management as Mali on daily wages on 1.4.1982. I had filed a civil suit on 4.1.1997 for regularizing my services in the civil court, Rohtak. But management terminated my services on 16.12.1997 without telling any reason to me. I continuously worked there. While terminating my services, no notice, no notice pay and no retrenchment compensation was given. My juniors are still working there. I withdrew my case from

the civil court. I continuously worked since 1.4.82 to 16.12.87. I have worked for more than 240 days. My work was satisfactory."

6. This was the assertion in his claim statement as well, stating that he worked as a Mali on daily wages in the Forest Department.

7. The management did not file written statement/statement of claim in the court below and, therefore, the assertion of the workman is accepted as correct as he has worked from April 01, 1982 on the principle of non-traverse. There has been a gross failure in the Labour Court to notice such an important point on which the case could hinge, if not on the issue of reinstatement but most certainly on the question of compensation in lieu of reinstatement where length of service is a predominant factor in moulding the relief amongst other attributes. The Labour Court in the impugned award assumed wrongly that the period of service is one year from April 01, 1996 to December 16, 1997. This is a hapless lapse or a careless oversight, the ramifications of which potentially would divert a case on the wrong side and cause injustice. Therefore, I take it as correct that the workman had served the management from April 01, 1982 to December 16, 1997. The petitioner had served for more than 15 years with the management. From the testimony of the witness of the management, it is revealed that the petitioner has filed a civil suit on January 04, 1997 in the Civil Court at Rohtak claiming regularization of his services but during the pendency of those proceedings his services were terminated by the respondent management without assigning any reason, issuing notice or paying retrenchment compensation.

8. In their defence to the action, the respondents have filed a

written statement for the first time in the present proceedings in which they have taken the stock defence of lack of jurisdiction in the writ court to make order of regularization in view of Secretary, State of Karnataka vs. Umadevi, (2006) 4 SCC 1 (Umadevi-3). It is by now well settled by the Supreme Court that *Umadevi(3)* does not apply to labour law which is governed by the enunciation of the subsequent law by the Supreme Court in Maharashtra State Road Transport Corporation Ltd. vs. Casteribe Rajya P. Karmchari Sanghatana, (2009) 8 SCC 556 explaining *Umadevi(3)* as inapplicable to labour laws and of cases coming via adjudication by the industrial adjudicator. In the face of the finding of the Labour Court that there was violation of Section 25-F of the 1947 Act it became incumbent on the Labour Court to consider threadbare the issue of reinstatement and assign proper findings to admit or deny the claim. This aspect is governed by the law laid down years ago in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., (1979) 2 SCC 80 the Supreme Court holding that when termination is illegal and void, reinstatement would follow in normal circumstances unless there are reasons necessitating departure. The petitioner was after all not up against a private company but against the State which has to act like a model employer. Even the amount of compensation awarded is, to say the least, rather absurd in awarding a pittance of ₹ 10,000/- in lieu of reinstatement which is itself a grave injustice. Compensation figures have to change with the changing times and monetary relief has to constantly adjust itself with the rising cost of living.

9. Coming to the second issue raised by the interim orders of the

coordinate bench reproduced above, this case now has to be considered from the standpoint as to whether the petitioner is entitled to regularization on the basis of discrimination. The has petitioner asserted in this petition that there were persons who worked shoulder to shoulder with him and were retained in service while the petitioner was litigating for reinstatement and consequential benefits; and their services have been regularized in the meanwhile. This was the query put by the Court to which the Office Order No.68 dated January 16, 2017 is addressed. The same is taken on record. The order has been examined but the query of the Court still remains unanswered and in a round-about manner the Divisional Forest Officer, Jhajjar in his order says:-

“3. That the petitioner has worked as casual labourer in the Forest Department on daily wages basis as per wages rate fixed by Labour Department, Haryana. The petitioner was not appointed against the vacant/sanctioned post at all and he has not completed 240 days in any calendar year. The case of the petitioner is not covered under which the other persons mentioned in the affidavit are regularized. The persons regularized were fulfilled the terms and conditions in policy. Therefore, he could not be equated with them.”

10. There is no explanation whatsoever in the order as to dates of appointment of the “other persons” as to when were they appointed, what was the nature of the appointment, how were they regularized and by which orders. There is no reference to any documented or relevant material to conclude that there has been no discrimination. It is well settled that what is not specifically denied is admitted and the Court can proceed on the presumption that the petitioner is speaking the truth. The onus has shifted to the department to distinguish the cases of the petitioner and the other

persons for this Court to believe their side of the story. In the order, the officer has relied on *Uma Devi* case and Official Liquidator v. Dayanand and others, (2008) 10 SCC 1 & State of Rajasthan and others v. Daya Lal and others, (2011) 2 SCC 429. While relying on these judgments the Officer has was not acquainted himself or briefed by his office or advised that there is a direct judgment of the Supreme Court on the point of discrimination as a relief-based ground in labour matters, delivered by the Supreme Court in Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another, (2014) 7 SCC 190, holding:-

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

11. The question of discrimination in a setting of labour litigation I have held in Khajjan Singh v. State of Haryana & Others, 2015 (1) SCT 604: 2015 (2) RSJ 135 that discrimination is a ground for bringing on par workers, some of whom have been advantaged with relief of regularisation while the other disadvantaged by acts of the employer in terminating services by illegal orders declare void by the labour courts.

12. Though the office order passed on direction of this court gives rise to a fresh cause of action but it is not an order independent of these proceedings since it has been generated through interim orders of this Court

and, therefore, I would not leave the petitioner to litigate afresh to question

the legality of this order and add to litigation which can easily be resolved today.

13. Having read the award and considered all the aspects of the case and heard the learned counsel for the parties, this Court is convinced that there is more than a single fundamental flaw of reasoning in the award which on account of it and for the reasons recorded above cannot be sustained, either in law or on the facts.

14. As a result of the discussion on the case as above, this petition is allowed. The impugned award is set aside. The office order dated January 16, 2017 is invalidated as it runs counter to Article 14 and the law in *Hari Nandan Prasad case (Supra)*. The petitioner is ordered to be reinstated to service. In order to serve the ends of justice, the petitioner would take 50% of the back wages. A formal order re: reinstatement to service and regularisation is directed to be passed in the light of this judgment. The exercise be completed within six weeks from the date of receipt of a certified copy of this order, either from the Court or from the petitioner, whichever is earlier.

(RAJIV NARAIN RAINA)
JUDGE

18.01.2017

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Whether speaking/reasoned Yes

Whether reportable Yes