

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

LPA No. 399 of 2018 (O&M)

Date of decision: 07.05.2018

State of Haryana through its Secretary to Government of Haryana, Forest Department, Civil Secretariat, Chandigarh and others.

.....Appellants

Vs.

Santra Devi w/o Sh.Om Parkash R/o Village Bardu Jogi, P.O. Pureda, Tehsil Loharu, District Bhiwani.

.....Respondent

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
AJAY KUMAR MITTAL,**

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Deepak Balyan, Additional Advocate General, Haryana
for the appellant-state.

Ajay Kumar Mittal, ACJ.

1. This order shall dispose of LPA Nos. 399 and 464 of 2018 as according to the learned counsel for the appellant-state, the issue involved in both the appeals is identical. However, the facts are being extracted from LPA No. 399 of 2018.

2. LPA No. 399 of 2018 has been filed against the judgment dated 07.05.2015 passed by learned Single Judge.

3. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. The respondent was initially employed as labourer in the year 1983. Her services were terminated on

28.02.2000. Case of the respondent was that the termination was bad in law as it was in violation of the provisions of Industrial Dispute Act, 1947 (in short, “the Act”). The reference was decided in favour of the respondent vide award dated 4.12.2007. As per the award, the respondent was held entitled to be reinstated with continuity of service alongwith 50 per cent backwages from the date of demand notice. In pursuance to the award, the respondent joined the services of the appellants on daily wages. The State of Haryana framed various policies of regularisation from time to time. The respondent submitted her representation to the appellants that her services should be regularised on the ground that the persons who were junior to her were regularised vide order dated 14.10.2006. The said representation was considered and rejected by the appellants. Aggrieved by the order, the respondent filed a Civil Writ Petition in this Court. It was claimed by the respondent that as her juniors had been regularised, therefore, she was also entitled for regularization in service w.e.f. the date they were regularized. In the reply, it was stated that in the light of the judgment of the Apex Court in *Secretary, State of Karnataka Vs. Uma Devi* (2006), 4 SCC 1, the services of the respondent could not be regularized. Further, it was stated that the policies dated 01.10.2003 and 10.02.2004 had been withdrawn by the State of Haryana vide order dated 25.04.2007. Thus, the respondent was not entitled for regularisation of services. Vide order dated 07.05.2015, this Court allowed the writ petition filed by the respondent in terms of the decision in CWP No. 10017 of 2017 titled as *Khajjan Singh and others Vs. State of Haryana and others* decided on 28.05.2014. In the said case, this Court attracted Article 14 of the Constitution of India and allowed the writ petition with a direction to the authorities to consider the case of the petitioner therein for regularisation. Against the judgment passed by learned

Single Judge dated 07.05.2015, the appellants have filed the instant Letters Patents Appeal.

4. We have heard learned counsel for the appellants.

5. Learned Single Judge has allowed the writ petition in terms of the decision in ***Khajjan Singh's*** case (supra). In the said case, the direction was given to regularize the daily wage labourer as per policies decision dated 31.01.1996 and 01.10.2003 as modified by the policy letter dated 10.02.2004 which protected the daily wage employees who had completed three years of service on 30th September, 2003 and were in service on that date. Thus, they were entitled for regularization. It was further recorded by this Court that the petitioners therein had award in their favour granting continuity of services alongwith backwages. The relevant observations recorded by this Court in ***Khajjan Singh's*** case (supra) read thus:-

“43. Manual daily wage workers may not hold posts under The State or in connection with the affairs of the State but they may deserve to be looked at with a humanistic view to try and understand their problems, their hopes and aspirations to ask the State to help them to ameliorate their lot albeit with a spirit of dynamic humanism as the rich and powerful may not need to truly understand or empathize with them. In the absence of recruitment rules shown by the State in its replies with respect to these set of cases, it may not be possible for this court to read violation of rule in the appointments made long years ago. Neither is it for this Court to make a fishing inquiry to throw out the claims. But when we look at such engagements if not properly called ‘appointments’ it should be tempered with a spirit of humanism and to be judicially pragmatic about it. The rules should not by themselves in the present cases without anything more become the iron curtains admitting no exception for manual workers. The challenge to illegal appointments by a suffering public is even more regretful in public interest litigation where service law

principles do not penetrate to quash an unlawful appointment, citing precedent. The wrongdoer has many protections in law but those protections are only till the conscience of the Court is disturbed when anything becomes possible and that is how we must view what constitutional Judges may do. That is where the insight of Kapadia, J. in the **M. Nagaraj** throbs. If the administrator implemented and obeyed the law as was designed and meant and had never made an oblique departure from rule, it would be trite to say that thousands and thousands of judgments may not have been written or needed to. Perhaps, **Uma Devi** would not have been written or necessitated, if all was ideally well with the world. The total picture thus has to be holistically painted by the pen of the Court even for one man standing in supplication before the Court asking for relief. This is what I think and may be completely wrong.

44. In the aforesaid background, the moot question is: are daily wage manual workers, as of whom have been exploited 'for years' by the State by resort to Unfair Labour Practice are they not entitled to a share in the sun, the shade and the moonlight, pray may I ask, for some security of work. Having posed the question there is still an answer, a counter point, permitted by law as an acceptable defence when raised by the State which the State raises routinely and casually when facing litigation in Court: Why did they accept the engagement to start with, after all? No one forced it on them? Who forces anyone? Who forces the State, expected to be a model employer, to give a job or compel it not to take it away. This is the prerogative of the State traced to article 310, the pleasure doctrine. The right to engage included the right to disengage. The logic cannot be faulted in Court. But then by applying standards of humanism it then becomes more a matter of judicial sensitivity tempered with the law, in matters of grant of relief, by the constitutional court, where the process of unshackling past judicial burdens is constantly going on to supply blood to the living tissue of the law so that it does not decompose."

In the present Case, the respondent joined the service on daily wages. Her services were terminated on 28.02.2000. The reference was decided in favour of the respondent. She was held entitled to be reinstated with continuity of service alongwith 50% backwages from the date of notice.

6. Learned counsel for the appellants has not been able to point out any error or illegality in the judgment passed by the learned Single Judge on the basis of the decision rendered in *Khajjan Singh's* case (supra). Even before this Court, learned counsel for the appellant has not been able to produce any material on record to controvert the findings recorded by the learned Single Judge. Consequently, finding no merit in these appeals, the same are hereby dismissed. In view of dismissal of appeals, the applications for condonation of delay in filing the appeals are also dismissed.

(Ajay Kumar Mittal)
Acting Chief Justice

May 07, 2018
'gs'

(Tejinder Singh Dhindsa)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes