

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

**CWP NO. 1711 OF 2012
RESERVED ON : 04.07.2019
PRONOUNCED ON : 05.08.2019**

Ram Kumar and others

...Petitioners

versus

**National Seeds Corporation Limited
and others**

...Respondents

with (2) CWP NO. 5560 of 202012

Kirpa Ram and others

...Petitioners

versus

**National Seeds Corporation Limited
and others**

..Respondents

and (3) CWP NO. 13243 of 2012

Dhanpat and others

...Petitioner

versus

**National Seeds Corporation Limited
and others**

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. V.K. Jindal, Senior Advocate with
Mr. Ashutosh Kaushik, Advocate
for the petitioners.

Mr. Tribhuvan Dahiya, Advocate
for respondent-National Seed Corporation Limited.

ARUN MONGA, J.

1. This order of mine shall dispose of above-mentioned
three writ petitions, as common questions of law and facts are

involved therein. For brevity the facts are taken from CWP No. 1711 of 2012.

2. Petitioners herein are seeking regularization of their services having fulfilled the conditions enumerated in policies dated 20.10.1994 (Annexure P-3) and 30.06.1995 (Annexure P-4). Difference of salary has also been claimed along with interest.

3. Initially, CWP-1711 of 2012 was filed by six petitioners. However, vide order dated 14.10.2015, petitioner No.1 withdrew the petition. Likewise, petitioners No. 3,4, 9, 13, 16, 17, 18, 19, 21, 22, 38, 42, 43, 45, 46, 49 in CWP No. 5560 of 2012 withdrew the petition on their behalf on different dates. CWP No. 13243 of 2012 was though filed by five petitioners, but later it was withdrawn qua petitioners No.1 and 3.

4. Adverting to CWP No. 1711 of 2012, the case of the petitioners is that they joined the service of respondent No.2 as daily wagers during the period 1986 to 1989 and their names figure in the seniority list (Annexure P-1) at Sr. Nos. 82, 101, 108, 110 and 112 respectively.

5. On 11.08.1988 the respondents notified a regularization policy (Annexure P-2) and decided to regularize every year the services of 7% of the daily wagers, who had put in more than 12 years of service, as per their seniority. The policy was, however, amended vide subsequent notification dated 20.10.1994 (Annexure P-3) vide which the rider of 12 years was removed and it was decided to extend the benefit of

regularization from 1994-95 onwards to all the daily wagers who had to their credit 240 days of service as on 1st April.

6. Another amendment was made in the policy vide circular dated 30.06.1995 (Annexure P-4) whereby regularization to the extent of 7% of the employees in a year was increased to 10%. However, a stipulation was inserted that such a workman had to have to his credit 10 years of service at the time of regularization.

7. Notwithstanding, the petitioners who were serving the respondents from 1986 onwards were not granted the benefit of regularization policy. They submitted their claim for regularization by way of representation dated 30.10.2004 (Annexure P-5), but to no avail.

8. In the meanwhile, certain daily wagers approached Civil Court by way of filing a civil suit seeking the relief of regularization as per circular dated 30.06.1995 (Annexure P-4). They also claimed difference of salary granted to the daily wagers and regular employees along with interest. The suit was decreed on 10.12.2005 (Annexure P-6) observing that the department failed to implement its own policy. Consequentially, the relief of regularization, as prayed for, was granted. The respondents unsuccessfully challenged the judgment of the Civil Court before the First Appellate Court, this Court (second appeal) and the Apex Court.

9. The grievance of the petitioners is that despite serving

the respondents for more than 20 years and fulfilling the eligibility conditions laid down in policy dated 30.06.1995 (Annexure P-6), their services have not been regularized and their status is still that of a daily wagers.

10. In the return filed by the respondents, issuance of regularization policy is not disputed. However, their stand is that on account of financial crunch the regularization policy was not implemented and no proposal of regularization was approved after year 1999. There was disparity between the income of the Corporation and expenses, owing to which, the regularization policy was kept in abeyance vide Board's resolution dated 21.05.2004. Even restructuring of the Corporation was recommended by the Board for Reconstruction of Public Sector Enterprises in the year 2005. The daily wagers were permitted to continue at work so as to earn their livelihood.

11. It is also averred that daily wagers of Bahraich Farm approached Allahabad High Court seeking relief of regularization but were only granted relief of minimum scales (without arrears and allowances). The Board of Directors then decided to pay minimum scales all across to all the daily wagers deputed in all other Farms of the Corporation. It was also decided to make a common seniority list of the daily wagers working in all the Farms of the Corporation, on centralized basis, during September 2011. After due deliberations and consultations with the affected parties, the seniority list was finalized wherein the names of

petitioners also figured. The process of implementing/reviving the regularization policy has already been initiated as per the said seniority list.

12. To justify the denial of benefit of policy to the petitioners, it is also pleaded that they were back door entrants and no legal right accrued in their favour to claim regularization, as a matter of right. They are being paid as per the Minimum Wages Act. It is additionally pleaded that neither any procedure was followed while appointing the petitioners nor were they appointed against vacant posts. Therefore, they cannot be equated with regular employees of the Corporation.

13. My learned Brother Deepak Sibal, J. after hearing learned counsel for the parties in the present proceedings, observed in order dated 03.03.2015, as under:-

"In view of the above, I consider it proper to direct the respondent-Corporation to conduct an exercise to the effect that which of the petitioners are entitled for regularization of their services under the policies dated 11.8.1988 amended through policies dated 20.10.1994 and 30.6.1995 prior to the resolution of the respondent-corporation dated 21.5.2004 holding the above policy for regularization in abeyance. The results of the above exercise be filed in this Court by way of an affidavit of a responsible officer before the next date of hearing."

14. Pursuant thereto, affidavit of Mohd. Raquim, Company Secretary, National Seeds Corporation Ltd. was filed. Apart from reiterating the stand taken in the written statement, it is averred

therein that after overcoming the financial crunch, the Corporation decided to revive the regularization policy w.e.f. 01.04.2012. Accordingly, services of all daily wagers who fulfilled the conditions laid down in policy are being regularized. Some of the petitioners in the writ petitions were granted the benefit of regularization as per their seniority and therefore, they withdrew their names from the petitions filed before this Court. The remaining, who fulfilled the conditions laid down in policy dated 16.04.2012, which envisages that regularization would be given effect from the common seniority list of daily wagers who have completed 10 years of continuous service as on 31.03.2012, would also get the same relief on their turn. A uniform policy has thus been formulated, which is applicable to all the daily wagers working in different Farms of the Corporation and the petitioners cannot be considered in isolation.

15. Still later my learned Brother P. B. Bajanthri, J. in course of hearing, passed the following order dated 05.08.2016 :

"The respondents' counsel submitted that in phased manner, the services of the daily wagers are being regularized having regard to the financial conditions of the respondents-Corporation. In the month of June, 2015 an affidavit has been furnished giving the details regarding financial issues. Irrespective of financial issues of the respondents-Corporation, they are directed to file an additional affidavit what are the steps taken by them from July, 2015 for regularization of daily wagers as per various policies to this day before the next date of hearing."

Pursuant thereto, another additional affidavit was filed by aforesaid Mr. Mohd. Raquim. It is stated therein that after amalgamation of the State Farms Corporation of India Ltd.(SFCI) with the National Seeds Corporation Ltd.(NSC), the Board of Directors has approved a common policy of regularization dated 14.07.2016 (Annexure R-9) for regularization of Daily Wage Workers (DWWs) of the pre-amalgamated NSC and the Daily Paid Workers (DPWs) of erstwhile SFCI and process of regularization is being carried out. Names of eight DPWs working at Central State Farm,Hisar were mentioned whose services are regularized during October, 2015 and nine names of DPWs were provided whose regularization has to take place w.e.f. October, 2016.

16. In this background, I have heard Mr. V. K. Jindal, learned senior Advocate assisted by Mr. Ashutosh Kaushik, Advocate for the petitioners and Mr. Tribhuvan Dahiya, learned Advocate for respondent No.1/National Seeds Corporation Limited (erstwhile State Form Corporation of India Limited).

17. Opening his arguments, learned senior counsel emphatically relied upon judgment dated 17.08.2009 rendered by this Court in RSA No. 4251 of 2008 (Annexure P-7) arising out of the civil suit proceedings (Annexure P-6) instituted by similarly situated DPWs. Before proceeding further, it would be educative to reproduce the view taken by my learned brother Ajay Tewari,

J. while disposing of the said RSA in the following terms :-

" The only plea taken was that the policy of regularization had been put on hold whereas, as per the order extracted above, it was represented that the policy of regularization stood withdrawn. Learned counsel showed me a resolution Exhibit D-8 wherein for the first time the Board approved the proposal for keeping in abeyance the policy of regularization. However, as has been rightly noticed by the Courts below this approval came only on 18.03.2004 meaning that prior to this date the policy of regularization was in force, the only change being that whereas prior to 1998 it were the Directors of the individual Central state Farms who could pass the order of regularization but after 1998 the said power was vested in the Board of Directors of the State Farm Corporation of India Limited. This fact, however, would not change the essential postulate that the regularization policy was in force. What has been held by the Courts below is that the case of respondents was not considered as per the policy which was in force and on this account the suits for claiming regularization were decreed. It is against this backdrop that the following questions which have been proposed have to be considered :

i) Whether the learned Lower Courts erred in regularizing the service of the respondents/plaintiffs contrary to settled law ?

ii) Whether the learned Lower Courts were justified in decreeing the suit in favour of the plaintiff and holding that the plaintiffs are entitled to regular pay scale and to the difference of salaries drawn along with interest thereupon @ 12% per annum ?

iii) Whether the impugned judgments dated 26.09.2008 and 10.12.2005 are perverse and untenable in law and based on surmises and conjectures and thus, liable to be set aside ?

Questions No.(i) and (iii) are held against the appellant. However, with regard to question No.(ii) learned counsel has argued that the award of interest at 12% per annum is excessive.

Admitted to consider question No. (ii)."

18. From the perusal of above, it is borne out that the only issue on account of which the RSA was admitted is with regard to quantum of interest, while the other issues were decided against the respondent-Corporation. An SLP preferred against the above judgment was dismissed by the Hon'ble Supreme Court and thereafter a review petition was also filed before the Apex Court which too met similar fate. The judgment of learned Single Judge upholding the decree of the learned lower civil Courts has thus attained finality. Learned senior counsel submits that on that short ground alone, the petitioners are entitled to be regularized on parity with the plaintiffs in the civil suit as the same was filed by similarly situated daily paid workers. There is no ground as to why the petitioners be disentitled to same benefits on the ground of parity, he contended.

19. As regards the stand taken by the respondent Corporation that the regularization policy was kept in abeyance in the year 2004 owing to the paucity of funds, learned senior

counsel submits that the same is illegal and unsustainable defense and has been taken merely to defeat the claim of petitioners qua their arrears and seniority to which they are otherwise entitled in the light of policy dated 30.06.1995.

20. In support of his argument, learned senior counsel has also cited various judgments rendered inter-alia by Apex Court viz. "*Chief Conservator of Forest v. Jagannath Maruit Kondhare*" 1996(2) SCC 293; *Malathi Dass (Retd.) Now P.B. Mahishy and others v. Suresh and others*" 2014(13) SCC 249; by this Court viz. "*Surjit Kaur v. State of Punjab*" 2015 (5) SLR 149 and "*Khajjan Singh and others v. State of Haryana and others*" 2015 (1) SCT 604. He also relied upon a Division Bench judgment of Allahabad High Court in case titled as "*Zakir Hussain v. Engineer-in-Chief, Irrigation Department and others*" 1993 (6) SLR 673.

21. Per contra, Mr. Tribhuvan Dahiya, learned counsel for respondent No.1-Corporation resisted the claim of the petitioners, *inter-alia*, on the ground that the judgment rendered by this Court in RSA No.4251 of 2008 is in "*personam*" and not a judgment in "*rem*". He argued that the said judgment (Annexure P-6) was passed in peculiar facts and circumstances of that case which do not apply to the petitioner. He submits that as recorded in Part 14 of the judgment (Annexure P-6) of trial Court, the daily paid workers/plaintiffs therein had been interviewed and a selected list (Annexure D) which included their names, was prepared on 27.04.2000. He submits that at that time the policy

of regularization was in operation and it was kept in abeyance subsequently on 21.05.2004 vide a decision of Board of Governors contained at Annexure C filed with additional affidavit dated 08.08.2017. He further argued that none of the petitioners approached any Court of law seeking regularization prior to 2004 when the relevant policy of regularization was in operation. First time they approached the Court was by filing the present writ petition in the year 2012, after delay of about nine years. He argued that on that short ground alone, the petitioners are disentitled from claiming the relief as prayed herein. He further argued that it is well settled principle of law that fence sitters have no right to claim relief after an inordinate delay on the ground that similarly situated persons, in some other Court proceedings have been granted benefit under the orders of the Court. He argued that delay and laches is duly recognized principle of exception qua the alleged discrimination. He relied on a judgment of Hon'ble Supreme Court in case titled as "*State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others*" 2015 (1) Supreme Court Cases 347, in support of his argument that delay and laches is an exception to Rule of non-discrimination.

22. As regards the policy being kept in abeyance due to poor financial position of the Corporation, Mr. Tribhuvan Dahiya, learned Advocate argued that all the employees were since offered VRS vide letter dated 21.05.2004 (Annexure C) pursuant

to a decision taken by the Board of Corporation and therefore, at this stage, petitioners are disentitled to seek reversal of the said decision of the Board. He argued that the said decision of Board offering VRS has not been challenged by the petitioners till date. Mr. Dahiya further pointed out that the respondent-Corporation was declared a sick company and was referred to Board for Reconstruction of Public Sector Enterprises in the year 2005. Subsequently, the Government of India decided to convert its outstanding loans and interests amounting to ₹124.42 crores into equity and adjust the losses of ₹117.12 crores against the enhanced equity. The process of restructuring of respondent Corporation was completed in February, 2010 and it was thereafter that the decision was taken to give minimum of scales of Class IV employees to the Daily Paid Workers working in different farms including the petitioners and restructure the process of regularization. He submitted that since in the interregnum a number of Daily Paid Workers have retired or taken VRS or left the service due to other reasons it was decided to prepare the seniority list (Annexure R-4) of Daily Paid Workers including those of Hisar Farm (where the petitioners are working/worked) for regularization. Based on the final seniority list, Board of Directors in its meeting held on 19.03.2012, approved the proposal to restructure the process of regularization subject to fulfilment of certain conditions as conveyed vide letter annexed as Annexure R-5. He further

submitted that ever since, the Daily Paid Workers are being regularized on yearly basis.

23. Learned counsel representing the respondent Corporation argued that by way of present writ petition, the petitioners want to jump the que/seniority position and also want to steal a march over the persons who have not approached the Court and that such a course cannot be permitted. He further pointed out that in any case, neither the decision of Board to restart the regularization, nor the conditions envisaged in the letter Annexure R-5 have been challenged by the petitioners and therefore, they are estopped from claiming the benefit of regularization on the basis of parity with the plaintiffs in the civil suit which lead to passing of judgment of this Court in RSA No.4251 of 2008.

24. Lastly, learned counsel for the respondent Corporation argued that the petitioners have no right to seek regularization from any date prior to the date assigned vide Annexure R-5, firstly because the policy of regularization of Daily Paid Workers is not confined to Hissar farm only to which the petitioners belong; secondly, the financial condition of Hisar farm is already very bad as depicted in its balance sheets for the year 2003-4 to 2013-14 reproduced in the affidavit dated 17.06.2015 filed by the respondent Corporation. In case the date of regularization is altered, as prayed by the petitioners, it would be a tremendous strain on the corporation's finances making it financially unviable.

He, therefore, sought dismissal of the writ petition in view of the aforesaid arguments.

25. Adverting first to the last argument of learned counsel for the respondent Corporation, it is no more *res integra* that paucity of funds cannot be a ground for denying the benefit of regularization to the deserving employees. Particularly, in the present case, where work was extracted from hapless poor workers for years together on daily wages. In this context, reference may be had to a Division Bench judgment rendered by Allahabad High Court in *Zakir Hussain's case (supra)*, relied upon by learned senior counsel for the petitioner, which expressed its opinion in the following terms :

"8. A Division Bench of this Court in Bhullar Nath Yadav v. Mayohall Sports Complex, Allahabad 1990 AWC 1005, which has been relied upon, has considered the question of regularization of the employees working on daily wage basis for about ten years and in that connection this Court issued directions to the respondents to prepare the scheme for regularization and absorption of the daily wagers. Relevant extract from the said judgment is reproduced below :

"Some of the petitioners have been working on daily wages for more than ten years and no steps have been taken by respondents for regularizing their services. Paucity of funds or absence of sanctioned post cannot be a ground for denying the benefit of regularization to the petitioners. It is undisputed that respondents are paying wages to the petitioners regularly

and if they have funds for paying them for the last several years it is not possible to believe that they are short of funds. When work is of permanent nature there is no justification for not having regular post. In any case non-regularization of the daily wagers for such a long period appears to us to be arbitrary and unfair. Judgments of Hon'ble Supreme Court are binding on the respondents and they have to devise ways and means to absorb them on permanent basis. In our view at least those who have put in more than three years service on daily wage basis are entitled to be absorbed and their services are liable to be regularized."

26. The defence of paucity of funds or financial burden being the ground of denial of grant of benefit to the poor hapless daily wagers has been strongly deprecated by Hon'ble Supreme Court in the case of *Chief Conservator of Forest's case (supra)* in following words :

"28. Insofar as the financial strain on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forests Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood Rs.300 crores- a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in

terrorem. We have neither been impressed by the first nor frightened by the second inasmuch we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forests Department or any other Department of the Government."

27. The above said sentiments have been duly echoed by my learned brother Mahesh Grover, J. (as he then was) in *Surjit Kaur's case (supra)* cited by learned senior counsel, though in a somewhat different context where plea was taken that daily wagers could not be adjusted on the ground of non-availability of the posts, in the following words :

*"The plea of the respondents is that posts were not available can only be taken with a pinch of salt. If an employee's services are utilized for more than 3 decades then such a plea of the respondents can hardly be accepted. Evidently it is a case of utter exploitation of human resource by the State of Punjab and at best be termed to be a unfair practice. This Court has already taken a similar view in CWP no. 15342 of 2012 titled as **Bhag Singh vs. State of Punjab and others** decided on 15.12.2014."*

*In CWP No.1169 of 2011 titled as "**Balwinder Kaur & others vs. The State of Punjab and others**" 2015 (2) SCT 98, this Court has observed as under:-*

"Considering the length of service rendered by the deceased employee without the benefit of regularisation can at best be termed to be an exploitative action on the part of the State and human resource

whose service are so desired and utilized for such an inordinate long period, cannot be kept away from the fruits of a regular employment on the premise of non-availability of vacancies. The State which professes to be a Welfare State, bound by the dictates of the Constitution of India which mandates adherence to Articles 14 and 16 of the Constitution in terms of public employment, can ill afford to seek refuge in such hypocrisy. If the services of an incumbent are required for more than three decades and practically utilized for that purpose, then the plea of non-availability of regular posts is unacceptable.

It is because of the fortuitous circumstances that the deceased employees were kept away from regularisation firstly on account of the will of providence and secondly on account of laxity on the part of the State”.

xxx xxx

In the present case, as has been observed earlier, the Court feels that the action of the respondents is violative of Article 16 of the Constitution of India, if an employee is to be denied the benefit of regularisation, as this would tantamount to negation of the principle of equality in matters of employment. It is not a case of misplaced sympathy as the Court is conscious that rules are to be adhered to and enforced, but the Court cannot overlook the exploitation of human resource at the hands of the State and this action at best, can be termed an

unfair labour practice when it chooses to keep the fate of the employee hanging in balance to take advantage of his need for employment.”

28. On to the argument of learned counsel for the respondent corporation that the petitioners are not entitled to regularization on the basis of parity with respondent (DPWs) in RSA No.4251 of 2008. The argument initially seems attractive as it is urged that the said judgment is in '*personam*' and therefore, cannot be applied in '*rem*'. However, on deeper analysis the same loses flavour and turns insipid as one cannot lose sight of the logic and ratio rendered by learned Judge vide his order Annexure P-7, as under :

“What has been held by the Courts below is that the case of respondents was not considered as per the policy which was in force and on this account the suits for claiming regularization were decreed.”

29. Even if I were to accept the argument of learned counsel for the respondent that the judgment is in '*personam*' as contended by him, the petitioners on their own legs stand on equally strong footing, especially, in view of the dictum of Hon'ble Apex Court in *Malathi Das's case (supra)* as contained in para 8 thereof, relevant extract of which is reproduced herein below :-

“xxx

8. Similarly placed employees having been

regularized by the State and in case of some of them such regularization being after the decision in Umadevi (supra) we are of the view that the stand taken by the appellants in refusing regularization to the respondents cannot be countenanced. However, as the said stand of the appellants stem from their perception and understanding of the decision in Umadevi (supra) we do not hold them liable for contempt but make it clear that the appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order."

30. In Khajjan Singh's case (supra), the scope of Uma Devi's judgment and applicability thereof was gone into threadbare by my learned brother Rajiv N. Raina, J. and respectfully I am in complete agreement with his views expressed as below :

"62. xxxx

However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of [Art.14](#) of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding [Art. 14](#), rather

than violating this constitutional provision."
(emphasis added)

63. xxx

The clamour for regularization on principles of unfair discrimination is now louder for passing of favourable office orders of regularization in cases coming via the Industrial Tribunals and Labour Courts giving rise to a demand for application of constitutional law principles re: discrimination. I may say that any minor discrimination is not unfair because it may suffer reasonable restrictions as are permitted by the law. That is why I have dwelt only on unfair discrimination which is judicially unacceptable, but not mere discrimination which may suffer reasonable restrictions. But the position here is unacceptable because it is not legally justified to break a homogenous group as under artificially. Failing which non-regularization of left over workers/the unfortunate group as now defined in Hari Nandan Prasad would amount to hostile and invidious discrimination. Therefore the equilibrium has to be restored by granting the status quo ante from the dates counterparts secured benefit of regularization by administrative orders passed without judicial intervention. The Supreme Court holds in Hari Nandan Prasad that "...the Industrial adjudicator would be achieving the equality by upholding [Art. 14](#), rather than violating this constitutional provision".

65. High Court Judges bound by Constitutional limitations in [article 14](#) as elsewhere in the law are enjoined to erase unfair inequality resulting from adverse State action or inaction and would remain under oath while discharging judicial duties to strike

down unfair discrimination the moment they find its ugly head rearing from case papers placed before them. They would remain bound to kill the weed before it grows on the meadow of [article 14](#). [Article 14](#) to say the least is the heart of the law pumping sap into the capillaries of the Constitution so that it grows well nourished and well tended into a Banyan tree with its root system pervading all things. After South Africa won its freedom the emblem of its Constitutional Court became the Banyan Tree.

66. Any unfair discrimination practiced by the State has to be dealt with by the strong arm of the law by firm affirmative action in order to remove unfair discrimination and not to promote it so that rights of no citizen go un-redressed. It would be a crying shame to leave the petitioners deserted and feeling that [article 14](#) was not meant for them and only for the 'haves'. Subverting consciously the equality clause in [article 14](#) would be an anathema to the Constitution. Judges may as well then pack up their bags and go home.

xxx---

69. xxx

[The Industrial Disputes Act](#) is a piece of beneficial social welfare legislation which stands alone and apart from constitutional service law. However, as time passed and departures were made with India opening up to globalization and free enterprise the axis suffered a paradigm shift towards capital and then the Supreme Court spoke in [Harjinder Singh vs. Punjab State Warehousing Corporation](#), (2010) 3 SCC 192 to turn back the rising tide. A sea change was brought about by a quick series of judgments with [Harjinder](#)

Singh in the lead. The Court's deep anguish in Courts contributing to emasculating the original scheme of labour laws could not have been expressed with greater pathos than in para. 30-31 which observations are significant in the present context and can be profitably noticed:-

"30. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman- employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together

and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."

70. This statement of law is, or what I may call, the re-statement and re-visit of the law, is effectively the summum bonum of humanism in action from the last Court of judicial resort.

xxx xxx

72. The tone had been set. [Article 19](#) and [21](#) were debatable so far as primary review was concerned. [Article 14](#) was impartible. It is not negotiable. In Om Kumar (supra) the question of violation of [article 14](#) was directly answered by the same Hon'ble Judge. This is how both the rulings have to be beaded together, the first exploratory and the other explanatory of primary review jurisdiction while dealing with oppressive infractions of [article 14](#). Therefore, the Court when empowered with primary review jurisdiction becomes the administrator

and protector of equality before the law and the equal protection of the laws, so as to give meaningful, instant and ameliorative effect to the fundamental freedoms by not postponing such right deprivations for redress through non-constitutional adjudication, when facts demand and evidentiary proof is not found necessary in the facts and circumstances of a given case. By applying these standards of primary review of administrative action in the present cases where the fortunate ones secured their freedom of regularization without court intervention but which has resulted in hostile and invidious discrimination are declared bad in the eyes of law. The rule of law is clearly against man's inhumanity to man. This kind of deprivation is in contravention of the natural law of equality among citizens who are or have become equally placed in all respects of basic rights possessed by both of them as human beings even if there were no written constitution or statutory law protecting workers against unfair discrimination and unfair labour practice inter se of those who deserve equality of treatment with their counterparts obtained through the tardy process of Labour Court trial resulting in favourable awards by the deeming fiction of law, even then the Court must step in to vanquish subjugation of the spirit. No person aggrieved should be turned away thinking the Court failed in coming to aid by restoring the unfair imbalance created by the administrator.

73. On the conspectus of the above facts, law and the thread of judgments read together, and for the various reasons stated interconnecting the judicial decisions, the rights of the petitioners for ante-dated

regularization of services are declared in their favour and against the State.”

30. A perusal of the above judgment leaves no manner of doubt that the petitioners are entitled for ante dated regularization of their service. These writ petitions are accordingly allowed with a direction to the respondent Corporation to grant the benefit of regularization and seniority to the petitioners with effect from the date when the plaintiffs in civil suit were granted the same. However, the back date monetary benefits arising therefrom are confined to 38 months prior to institution of the writ petition while the future benefits shall enure to the petitioners according to the entitlement of their salary on parity with other similarly situated employees in the civil suit which resulted in passing of judgment dated 10.12.2005 (Annexure P-6).

(ARUN MONGA)
JUDGE

AUGUST 05, 2019

shalini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No