

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27th February, 2019
Date of decision: 28th March, 2019

+ **W.P.(C) 17555/2005**

PROJECT DIR.DEP OF RURAL DEVEL PETITIONER
Through Mr.Rizwan with Mr.Jatin
Ghuliani, Advs.

Versus

ITS WORKMEN THR.D.P.V.V.I.E.UN RESPONDENT
Through Mr.Piyush Sharma, Adv.

+ **W.P.(C) 10994/2006**

PROJECT DIRECTOR DEPARTMENT Petitioner
Through Mr.Rizwan with Mr.Jatin
Ghuliani, Advs.

versus

ITS WORKMEN THR. DELHIPRASASAN ..RESPONDENT
Through Mr.Piyush Sharma, Adv.

+ **W.P.(C) 4402/2007**

PROJECT DIRECTOR, DEPARTMENT PETITIONER
Through Mr.Rizwan with Mr.Jatin
Ghuliani, Advs.

versus

ITS WORKMEN THRU D.P.V.V.I.E.U RESPONDENT
Through Mr.Piyush Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. The present batch of writ petitions impugn three different but similar Awards passed by the Industrial Tribunal in ID No.45/2001, ID No.63/2003 and ID No.39/2006, and are, therefore, being decided by this common judgment. For the sake of convenience, only the facts of *WP(C) No.17555/2005* challenging the Award dated 04.12.2004 passed in ID No.45/2001, are being referred to hereinbelow.

2. As a part of the Mini Master Plan for the development of rural parts of NCT of Delhi, a proposal for the construction of multi-purpose community centers in different rural areas of Delhi was formulated and consequently, 28 multi-purpose community centers were constructed under the aegis of the petitioner/Government of NCT of Delhi, in June, 1997. The petitioner being desirous of employing ex-servicemen as caretakers at these community centers, requested the Rajya Sainik Board to recommend the names of registered eligible ex-servicemen for the said purpose.

3. Upon their names being forwarded by the Rajya Sainik Board, the 35 respondents/workmen were called for a personal interview by a selection committee constituted by the petitioner, based on whose recommendations the respondents were appointed as caretakers on contractual basis on a consolidated monthly salary of Rs.2,500/- vide appointment letters which comprehensively described their duties and responsibilities. Each of the respondents was directed to take charge of the management and security of the community centers assigned to

him. Pursuant to their initial appointments, the services of the respondents were extended from time to time, the last extension having been granted to them on 01.05.2001, whereafter they have uninterruptedly continued in service though without any specific letter of extension being granted to them.

4. The respondents, after having worked as caretakers at the community centers on consolidated salaries for more than two years, raised an industrial dispute on 07.12.1999, seeking regularization of their services. The respondents also sought grant of pay in the regular pay scale as applicable to the post of a caretaker, which dispute was referred to the learned Industrial Tribunal in February 2001 in the following terms:-

“Whether the workmen as shown in Annexure ‘A’ are entitled for regularization of their services in the regular pay scale applicable to the post of “Care Taker” and if so, to what relief are they entitled and what directions are necessary in this respect?”

5. Before the Tribunal, the main contention of the workmen was that though they had been performing a job which was perennial and regular in nature, involving duty periods of almost 24 hours at a stretch without weekly rest or holidays, yet the management had continued to employ them on casual basis for years together, only in order to deprive them of the benefits payable to a permanent employee. The workmen also contended that this action of the management amounted to an unfair labour practice within the meaning of Section 2(ra) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ‘ID Act’), for which reliance was placed on Entry No.10 of the Fifth Schedule of the said Act.

6. *Per contra*, the petitioner/management had contended that the very reference to the Industrial Tribunal was not maintainable as the workmen had been engaged by a government department, which could not be treated as an 'industry' within the meaning of Section 2(j) of the ID Act. Therefore, in the event the respondents were aggrieved by any action of the management, their only remedy was to approach the Central Administrative Tribunal under the Administrative Tribunals Act, 1985.

7. In the light of the specific plea taken by the petitioner that it was not an "industry" under Section 2(j) of the ID Act, the Tribunal framed the following two issues:-

- "i. Whether the management is not an industry. If so, its effect.*
- ii. As per terms of reference."*

8. Upon a consideration of the pleadings and the evidence led before it, the Tribunal, relying on the decision of the Supreme Court in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa [(1978) 2 SCC 213]***, rejected the petitioner's contention that it was not an 'industry'. The Tribunal further found merit in the respondents' contention that despite the nature of their work being of a perennial nature, their continuous employment for a period of six to seven years on temporary basis amounted to an unfair labour practice under the ID Act. Accordingly, the Tribunal, vide its impugned Award dated 04.12.2004, directed the petitioner/management to regularize the services of the respondents/workmen in the pay scale of Rs.650-1200 w.e.f. the date of the reference, i.e., 13.02.2001.

9. The present petition impugning the said Award, was filed in September, 2005 and this Court vide its order dated 11.11.2005, stayed the operation of the Award, which order was made absolute on 10.10.2007. At this stage, it may be noted that even though the operation of the Award continues to remain stayed, the petitioner has continued to engage the respondents/workmen in the same capacity. Consequently, the respondents have been working as caretakers for the last twenty-two years without any interim protection or direction from any court.

10. Mr.Rizwan, learned counsel for the petitioner while impugning the Award, has primarily raised two submissions, the first being that the Tribunal has erred in holding that the petitioner falls within the ambit of “industry” under Section 2(j) of the ID Act, as there is no production, supply or distribution of goods and services involved in running these community centers. He contends that the Award has been passed by the Tribunal without appreciating the fact that the operation of these community centers is a charitable activity undertaken by the petitioner in discharge of its public welfare duties. His second submission is that the respondents/workmen, having not been appointed through the process applicable for regular appointment, could not be directed to be regularized, especially when no posts of caretakers for running these community centers were ever sanctioned by the petitioner/department.

11. In support of his first submission, Mr.Rizwan submits that the Tribunal has erroneously relied upon the ratio in ***Bangalore Water Supply (supra)*** in that the petitioner’s project is neither remunerative in nature, as it is carried out by the petitioner in discharge of its public

welfare duties, nor is it an organized activity of a recurrent nature. By placing reliance on *State of U.P. v. Jai Bir Singh [(2005) 5 SCC 1]*, he states that the Supreme Court has not only expressed doubt regarding the correctness of the definition of ‘industry’ in *Bangalore Water Supply (supra)*, but has, while referring the same to a Seven-Judge Bench, specifically observed that public welfare activities ought to be kept outside the purview of the definition of ‘industry’ and that the ambiguity arising out of the judicial interpretation given to ‘industry’ in the said decision needs to be removed. He contends that in these circumstances, the Tribunal has erred in relying upon the interpretation of Section 2(j) in *Bangalore Water Supply (supra)* to hold that the petitioner is an ‘industry’.

12. In support of his second contention, Mr. Rizwan submits that the respondents were employed on a temporary basis as neither were there any sanctioned posts for caretakers in the petitioner department nor did the Mini Master Plan have any provision for recruitment of regular employees as caretakers. It is his contention that in the absence of any sanctioned posts, the Tribunal has erred in directing the regularisation of the respondents’ services as caretakers, especially in light of the ratio of the Supreme Court in *Secretary, State of Karnataka and Ors. v. Umadevi [(2006) 4 SCC 1]* and of this Court in *Anil Lamba and Ors. v. GNCTD and Ors. [WP(C) No. 958/2018]*. He states that the temporary nature of the posts held by the respondents is evidenced from the fact that the basic ingredients of a selection process to a regular post, which ordinarily include *inter alia* advertisement of the post, conducting interviews of those candidates who fulfill the eligibility criteria and the consequent selection and

appointment from the finalists, were absent from the appointment process followed in the case of the respondents. In fact, no assurance for regularisation was ever given to them as the work assigned to them was never ordinarily performed by regular employees.

13. Mr. Rizwan states that even otherwise, in the absence of any statutory provision which grants power to the courts of law to regularize the services of workmen initially employed on a temporary basis, the courts cannot arrogate to themselves such right to grant regularization. By placing reliance on *Uma Devi (supra)*, he states that the Supreme Court has categorically held that in cases of public employment, courts acting under Article 226 of the Constitution of India should not ordinarily issue directions for regularization unless the recruitment itself was made regularly. In the case of the respondents herein, whose recruitment had been made on a temporary and contractual basis without following any selection process under the recruitment rules, their demand for regularization was wholly misconceived. He further submits that in the absence of a legal right, courts cannot direct regularization of a workman who is not working on a sanctioned post, merely on the ground of sympathy.

14. On the other hand, Mr. Piyush Sharma, learned counsel for the respondents/workmen while supporting the impugned Award, submits that there is absolutely no reason for this Court to interfere with the said Award which has been passed after a careful consideration of *Bangalore Water Supply (supra)* and its applicability to the facts of the present case. Mr. Sharma states that the predominant nature of the services at the concerned community centers is an organized activity and is remunerative in nature, for which purpose he draws

my attention to the statement of one Mr. B.S. Banerjee who had, during his cross-examination before the Tribunal, admitted that the community centers in which the respondents were performing work of permanent nature were remunerative projects. In his cross-examination, he had further stated that the petitioner/department was willing to continue the respondents in service but was not being granted the requisite permission from the Finance Department, which fact is specifically recorded in the impugned Award.

15. Mr. Sharma further states that the findings of the learned Tribunal that the petitioner department was an industry, is in consonance with the dicta laid down in ***Bangalore Water Supply (supra)*** as there can be no doubt about the fact that the petitioner/department fulfils the triple test as laid down by the Supreme Court therein. By placing reliance on the decision of this Court in ***AIIMS v. Raj Kumar (LPA No. 1152/2007)***, he contends that decision in ***Bangalore Water Supply (supra)*** continues to be good law and merely because it has been referred for reconsideration to a larger bench, its precedential value is not lost.

16. In response to the second contention of the petitioner, Mr. Sharma submits that the admitted facts on record in itself show that the workmen were appointed to the post of 'caretaker' after having undergone the complete process of public selection and have been uninterruptedly working on these posts for almost twenty-two years. He submits that the Tribunal has rightly held that the petitioner's decision to keep the respondents as temporary workers for such a long period qualifies as an unfair labour practice and, therefore, the respondents/workmen were entitled to regularization. He submits that

these findings of fact were arrived at after duly considering the entire material on record, including the cross-examination of the petitioner's own witnesses and, thus, could not be faulted. Mr. Sharma relies on a decision dated 08.09.2015 of a Division Bench of this Court in ***Shri Ram Singh v. The Management of CPWD [LPA No.755/2014]*** to state that the reliance by the petitioner on ***Uma Devi (supra)*** and ***Anil Lamba (supra)***, is wholly misplaced as the said decisions do not deal with cases in the realm of industrial adjudication but pertain to matters of service law jurisprudence. By placing reliance on ***ONGC Limited v. Petroleum Coal Labour Union & Ors. [2015 (5) SCALE 353]***, ***Umrula Gram Panchayat v. The Secretary, Municipal Employees Union & Ors. [(2015) 4 SCALE 334]*** and ***Ajaypal Singh v. Haryana Warehousing Corpn. [(2015) 6 SCC 321]***, he states that Supreme Court has consistently held that the powers of the industrial adjudicator under the ID Act are very wide and as the purpose of the Act is to pre-empt industrial tensions, the adjudicator has been prescribed vast powers to issue preventive as well as positive directions to the employer. He, therefore, contends that once the Tribunal in the present case found the petitioner/management to be indulging in unfair labour practices, it was fully justified in directing the petitioner to regularize the services of the respondents.

17. I have heard the learned counsel for the parties at length and, with their assistance, perused the record. The first and foremost issue raised by the learned counsel for the petitioner is that, in view of the observations of the Supreme Court in ***Jai Bir Singh (supra)***, the learned Tribunal erred in still applying the test laid down in ***Bangalore Water Supply (supra)*** to hold that the community centers

in question were industries under Section 2(j) of the ID Act. In this regard it may be noted that in ***Jai Bir Singh (supra)***, the Court while observing that the limitations on the expansive import of the definition of ‘industry’ under Section 2(j) needed to be revaluated, initially referred the decision in ***Bangalore Water Supply (supra)*** to a larger bench of seven judges for reconsideration, which has been subsequently referred to an even larger bench of nine-judges vide order dated 02.01.2017 in *Civil Appeal No.897/2002*. The Supreme Court, however, has not laid down that all public welfare activities carried out by the government should be exempted from the applicability of the ID Act or that such activities undertaken by public departments should not be treated as industries within the meaning of Section 2(j) of the ID Act, even if they satisfy the triple test as laid down in ***Bangalore Water Supply (supra)***. Therefore, the position as it stands today is that the decision in ***Bangalore Water Supply (supra)*** continues to remain the binding precedent on this issue regarding the test to be applied for determining whether an undertaking is an industry under Section 2(j) of the ID Act. Consequently, this Court, or for that matter any court, cannot at present choose to ignore the precedent laid down in ***Bangalore Water Supply (supra)*** and must proceed to decide cases in accordance therewith as and when the occasion arises.

18. I am fortified in my aforesaid conclusion by the decision of a Division Bench of this Court in ***Raj Singh (supra)***, wherein the finding of the Labour Court that AIIMS is an industry within the meaning of Section 2(j) of the ID Act, was challenged on the ground that the decision in ***Bangalore Water Supply (supra)*** was pending

reconsideration before a larger bench. The said challenge was rejected by this Court by observing as under:-

*“7. It was submitted by Mr. Mukul Gupta, learned counsel for the appellant that the correctness of the decision of the Constitution Bench in the Bangalore Water Supply & Sewerage Board has been referred to a larger Bench of the Supreme Court and therefore, this Court should await the judgment of the larger Bench before deciding the present case. We are unable to accept this submission. **The law declared in Bangalore Water Supply & Sewerage Board continues to be binding. This Court has to apply the law as it prevails.** The reliance placed upon the decision of the Supreme Court in *Physical Research Laboratory v. K.G. Sharma* (1997) 4 SCC 257 is misconceived for the simple reason that the AIIMS does not cease to be a hospital merely because research is also carried on therein. Applying the law as explained in *Bangalore Water Supply & Sewerage Board*, AIIMS has to be held to be an “industry” within the meaning of the ID Act.”*

19. Thus, as long as the law laid down in ***Bangalore Water Supply (supra)*** is not overruled, it remains binding on all Courts and quasi-judicial bodies under Article 141 of the Constitution of India. It is for this reason that the learned Tribunal’s reliance on the said decision while examining whether the concerned community centers were industries within the meaning of Section 2(j) of the ID Act, cannot be held to be erroneous.

20. Now coming to the second limb of the petitioner’s first submission that even as per the test laid down in ***Bangalore Water Supply (supra)***, the community centers in question are not industries, as they carry out *public welfare activities* that are neither organized nor remunerative in nature. Before dealing with the aforesaid contention, it may be useful to refer to the following paragraphs of the decision in ***Bangalore Water Supply (supra)***, that lay down the

parameters for determining whether a particular undertaking is an industry or not:-

“13. [A]n industry is a continuity, is an organized activity, is a purposeful pursuit — not any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture — mechanical or handicraft-based — service, employment, industrial occupation or avocation. For those who know English and are not given to the luxury of splitting semantic hairs, this conclusion argues itself. The expression “undertaking” cannot be torn off the words whose company it keeps. If birds of a feather flock together and noscitur a sociis is a commonsense guide to construction, “undertaking” must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture “undertaking” in Section 2(j) to mean meditation or musheira which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From Banerji to Safdarjung and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

14. Likewise, an “industry” cannot exist without co-operative endeavour between employer and employee. No employer, no industry; no employee, no industry — not as a dogmatic proposition in economics but as an articulate major premise of the definition and the scheme of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

15. An industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives now, economic utilities, material goods and services, not transcendental flights nor intangible achievements — are the functional focus of industry. Therefore, no temporal utilities, no statutory industry, is axiomatic. If society, in its advance, experiences subtler realities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of western heritage. So we are confined to material, not ethereal end products.

16. This much flows from a plain reading of the purpose and provision of the legislation and its western origin and the ratio of all the rulings. We hold these triple ingredients to be unexceptionable.

* * *

40. The same two Judges choose to impart a wide construction to the word “industry”, for they ask:

“How can we, conformably to recognized rules of legal construction, attempt to limit, in an instrument of self-government for this Continent, the simple and comprehensive words ‘industrial disputes’ by any apprehension of what we might imagine would be the effect of a full literal construction, or by conjecturing what was in the minds of the framers of the Constitution, or by the forms industrial disputes have more recently assumed? ‘Industrial warfare’ is no mere figure of speech. It is not the mere phrase of theorists. It is recognized by the law as the correct description of internal conflicts in industrial matters. It was adopted by Lord Loreburn, L.C. in *Conway v. Wade* [1909 AC 511]. Strikes and lock-outs are by him correctly described as ‘weapons’.”

These arguments hold good for the Indian industrial statute, and so, Section 2(j) must receive comprehensive literal force, limited only by some cardinal criteria. **One such criterion, in the monarchical vocabulary of English Jurisprudence, is Crown exemption, re-incarnating in a Republic as inalienable functions of constitutional government.** No government; no order, no law; no rule of law, no industrial relations. So, core functions of the State are paramount and paramountcy is paramountcy. **But this doctrinal exemption is not expansionist but strictly narrowed to necessitous functions.**

* * *

140. “Industry’, as defined in Section 2(j) and explained in *Banerji*, has a wide import.

“(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale prasada or food), prima facie, there is an ‘industry’ in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

141. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) ‘Undertaking’ must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be ‘industry’ provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of ‘industry’ undertakings, callings and services, adventures ‘analogous to the carrying on the trade or business’. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

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143. The dominant nature test:

“(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not ‘workmen’ as in the University of Delhi case [University of Delhi v. Ramlfath, (1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 Lab LJ 335] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur will be the true test. The whole undertaking will be ‘industry’ although those who are not ‘workmen’ by definition may not benefit by the status.

(b)Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.”

21. Thus, as per the law laid down in ***Bangalore Water Supply (supra)***, an undertaking is an industry if it carries out (1) a systematic activity, (2) with the help of co-operation between the labour and the management, (3) for the production of material goods and services for the community at large. The absence of remuneration for the goods and services so provided is an irrelevant consideration, as the essence of the definition under Section 2(j) of the ID Act is the nature of the activity carried out by the undertaking with a focus on the relationship between the labour and management, and not whether the production process is profit-generating or profit-oriented. Furthermore, the *inalienable functions of the constitutional government* operate as the sole exception to the definition under Section 2(j) of the IDA, but

such sovereign functions must be understood in a limited and not expansionist sense. Therefore, while core administrative, judicial and legislative functions of the government fall out of the purview of Section 2(j) of the ID Act, other commercial and welfare activities carried out by the government that satisfy the triple-test for an 'industry', cannot avail of this exemption and are necessarily bound by the provisions of the ID Act.

22. In the light of the aforesaid settled legal position, when I examine the organizational set up and nature of the activities carried out by the concerned multi-purpose community centers, I find that they essentially perform a welfare function by providing the communities they are located in with spaces for social interaction. In so doing, they not only provide public spaces for commerce *inter se* private citizens (such as spaces for setting up small shops and kiosks for regular retail activities), but also provide access to larger spaces for one's private gatherings and other communal activities. The provision of such services and the sustained utilization of these public facilities to meet the material needs of people living in large communities, is made possible only through the active co-operation of the government and the caretakers employed to systematically maintain and administer these community centers. I am of the view that this entire process, though in the nature of a public welfare activity that is not strictly commercial, undoubtedly possesses the three characteristic features of an 'industry' under Section 2(j) of the ID Act, in that it contemplates the systematic maintenance and administration of the community centers to meet the tangible social needs of the community at large, through sustained co-operation

between the management/government and labour/caretakers. Therefore, in my opinion, these community centers fall squarely within the ambit of 'industries' as defined under Section 2(j) of the IDAct.

23. The plea of the learned counsel for the petitioner that the community centers fall outside the purview of Section 2(j) of the ID Act since they are being run by the petitioner as a non-remunerative welfare activity in exercise of its sovereign functions, cannot be accepted as it runs in the teeth of the decision in ***Bangalore Water Supply (supra)***, which not only repudiates profit or profit-motive as an integral attribute of industries under the ID Act but also carves out a single exception for the core functions of the government and not its other economic endeavors that satisfy the triple test laid down therein. It cannot be emphasized enough that considerations of remuneration and profit-generation are extraneous to the question of whether an undertaking is an 'industry', and the decisive test as per the prevailing jurisprudence is the nature of the activity being carried out and the essence of the employer-employee relationship. Even otherwise, a perusal of the record shows that the petitioner's own witness Mr. B.S. Banerjee had, during his cross-examination before the Tribunal, categorically admitted that the community centers were remunerative projects. Therefore, in view of the above, I find absolutely no infirmity in the conclusion arrived at by the Tribunal that the community centers in the present case are indeed industries under Section 2(j) of the IDAct.

24. Having rejected the petitioner's first objection to the impugned Award, I may now deal with the second submission made by Mr.

Rizwan that since the respondents were not appointed by way of regular appointment, their subsequent regularization would be contrary to the decision of the Supreme Court in *Uma Devi (supra)* as also of this Court in *Anil Lamba (supra)*. Before I consider this submission, it would be appropriate to notice that the present case stems out of an industrial adjudication, which field is occupied by a specific statute, i.e., the ID Act, and, therefore, the orders passed by the Industrial Tribunal have to be considered in the light of the provisions of the said Act. Furthermore, the undisputed position that emerges from the record is that the petitioner had requested the Rajya Sainik Board to recommend the names of some registered ex-servicemen to be appointed as caretakers of the community centers in question. Once the Rajya Sainik Board had recommended the respondents' names, they were called for a personal interview with the selection committee, based on the result whereof they were given official appointment letters informing them of the nature and scope of their duties. Pursuant to their initial appointment on contractual basis in 1997, the respondents have been in uninterrupted service till date, i.e., for a period of almost twenty-two years, and that too without any specific extension letters being issued to them after 2002.

25. In the backdrop of these admitted facts, I may now examine whether the decisions in *Uma Devi (supra)* and *Anil Lamba (supra)* apply to the facts of the present case. Both of these decisions relied upon by the learned counsel for the petitioner pertain to service law matters in which the employees had directly approached the writ Court. In *Uma Devi (supra)*, some public employees working in the Commercial Tax Departments of some districts in Karnataka, had

approached the Administrative Tribunal with a prayer to be made permanent employees and to be granted all benefits accruing to regular employees. Upon their claim being rejected by the Tribunal, the employees approached the High Court of Karnataka, which in turn not only directed the State to consider the employees' cases for regularization but also directed that they be paid the salary and allowances being paid to regular employees of their cadre, from the date of their initial appointment. It is in this context that the Supreme Court, while setting aside the decision of the High Court, had observed that contractual employees in public departments cannot seek regularization and confirmation of service on the ground of the length of their service. The Court, however, laid down an exception for those employees who had been appointed in an irregular but not illegal manner and had completed at least ten years of service without any judicial intervention, and directed the Government to take steps to regularize the services of such employees. Likewise, in **Anil Lamba** (*supra*), contractual employees of the Institute of Liver and Biliary Science had approached this Court seeking *regularization of their services*, which prayer was rejected on the ground that contractual employees appointed without following the process for regular appointment cannot claim regularization and confirmation of their services.

26. On the contrary, in the present case, the respondents/workmen had approached the Industrial Tribunal claiming that the petitioner was indulging in *unfair labour practices* as set out in Clause 10 of the Fifth Schedule of the ID Act. The Industrial Tribunal, after finding that the petitioner was indeed indulging in unfair labour practices, had

directed it to regularize the workmen's services with retrospective effect, but only from the date of the reference. Thus, it is evident that the issue in the present case was not of regularization of services, but of unfair labour practices being adopted by the management qua continuing with the services of casual labourers for long periods of time, for the purposes of doing work that should ordinarily be done by regular employees.

27. In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no reiteration that the basic tenets of service law are very different from those of labour law and, therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on a different footing and can neither be tested on the same touchstone nor enforced in the same manner. Therefore, I am of the opinion that neither the decision in *Uma Devi (supra)* nor in *Anil Lamba (supra)* has any application to the facts of the present case. Even otherwise, a perusal of the decision in *Uma Devi (supra)* shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically carved out an exception for those contractual employees who, though appointed irregularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on date completed more than twenty-two years of service and, therefore, even as per the decision in *Uma Devi (supra)*, they would be entitled to the regularization of their services.

28. The decisions relied upon by the learned counsel for the respondents in *Ajaypal Singh (supra)*, *ONGC (supra)* and *Umralla Gram Panchayat (supra)*, also leave no manner of doubt that the Supreme Court has specifically observed that the prohibition laid down for regularization in *Uma Devi (supra)* does not apply to industrial adjudication and that the Industrial Tribunal has the power to direct regularization of services in cases where pursuant to unfair labour practices, employees have been made to render services for long periods of time on casual basis for work that should ordinarily be done by regular employees. Reference may also be made to the observations of a Division Bench of this Court in the case of *Ram Singh (supra)*, wherein the decisions of the Supreme Court in *Ajaypal Singh (supra)*, *ONGC (supra)* and *Umralla Gram Panchayat (supra)* were relied upon to arrive at a finding that denying regularization of services to a temporary workman after he has been in uninterrupted service for a very long period, tantamounts to an extremely unfair labour practice. For the sake of ready reference, the relevant paragraphs of the decision in *Ram Singh (supra)* are extracted hereinbelow *in extenso*:-

13. Mr. Rajiv Aggarwal, learned counsel appearing for the appellant/Ram Singh has also drawn our attention to a recent pronouncement of the Supreme Court reported as 2015 (5) SCALE 353 in **ONGC Limited v. Petroleum Coal Labour Union & Ors.** in support of his submission that the prohibition laid down in *Uma Devi* does not apply to industrial adjudication. We may usefully extract the relevant portion of this judicial pronouncement, which reads thus:-

“ 11. On behalf of the workmen concerned, it was contended before the Single Judge of the High Court that the dispute falls within the jurisdiction of the Tribunal under the provisions of the Act and that the Tribunal had

sufficient jurisdiction to adjudicate the dispute referred to it. It was further contended on behalf of the workmen concerned that they have been working on temporary basis from the year 1988 and continuing their services on temporary basis is an unfair labour practice on the part of the Corporation. Therefore, it was contended that the Tribunal was right in directing the workmen concerned to be regularised and that the law laid down in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] had no application to cases of industrial adjudication.

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27. Further, it is very clear from the facts that all the workmen concerned have got the qualifications required for their regularisation, except one of them and have been employed by the Corporation even prior to 1985 in the posts through various irregular means. **The Tribunal has got every power to adjudicate an industrial dispute and impose upon the employer new obligations to strike a balance and secure industrial peace and harmony between the employer and workmen and ultimately deliver social justice which is the constitutional mandate as held by the Constitution Bench of this Court in a catena of cases.** This abovesaid legal principle has been laid down succinctly by this Court in Bharat Bank Ltd. v. Employees [AIR 1950 SC 188], the relevant paragraph of the said case is extracted hereunder: (AIR p. 209, para 61)

61. "We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers

essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organisation on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. In describing the true position of an Industrial Tribunal in dealing with labour disputes, this Court in Western India Automobile Assn. v. Industrial Tribunal [(1949-50) 11 FCR 321] quoted with approval a passage from Ludwig Teller's well known work on the subject, where the learned author observes that: (FCR p. 345)

“... industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements.”

The views expressed in these observations were adopted in its entirety by this Court. Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial tribunal and its determination is not a judicial determination in the proper sense of these expressions.”

It has been further held by this Court in LIC v. D.J. Bahadur [(1981) 1 SCC 315 : 1981 SCC (L&S) 111] , as follows: (SCC p. 334, para 22)

22. *“The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counterproductive battles and the assurance of industrial justice may create a climate of goodwill.”*

Thus, the powers of an Industrial Tribunal/Labour Court to adjudicate the industrial dispute on the points of dispute referred to it by the appropriate government have been well established by the legal principles laid down by this Court in a catena of cases referred to supra. Therefore, the Tribunal has rightly passed an award directing the Corporation to regularise the services of the concerned workmen.

28. Whether the appointment of the workmen concerned in the services of the Corporation is irregular or illegal?

31. In the case on hand, the workmen concerned were employed by the Corporation initially through contractors. Thereafter, on issuance of the Notification dated 8-12-1976 by the Central Government abolishing contract labour for the posts of watch and ward, dusting and cleaning jobs in the Corporation under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, the Corporation and the workmen concerned arrived at a settlement under Section 18(1) of the Act, wherein a cooperative society was formed in the name of "Thai Security Service Priyadarshini Indira Cooperative Society" for their welfare, thus dispensing with intermediary contractors. During the pendency of the sanction from the Central Government of the alleged "policy decision", the workmen concerned were appointed directly from 13-1-1988 to 29-2-1988 and thereafter, they were employed continuously without written orders by the Corporation. ***It is the contention of the learned Senior Counsel on behalf of the Corporation that the services of the workmen concerned cannot be regularised as their appointment was originally and initially through contractors and thereafter, without following any procedure of selection and appointment as per the Recruitment Rules and therefore, the same is illegal by placing reliance on the decision of this Court in para 43 of Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. Further, this Court in Ajaypal Singh v. Haryana Warehousing Corpn. [(2015) 6 SCC 321 : (2014) 13 Scale 636] opined that when a workman is initially appointed in violation of Articles 14 and 16 of the***

Constitution of India, then the employer at the time of re-employment of the retrenched workman cannot take the plea that the initial appointment was in violation of the abovementioned provisions. The relevant paragraph of Ajaypal Singh case [(2015) 6 SCC 321 : (2014) 13 Scale 636] is extracted hereunder: (SCC p. 329, para 17)

17. "...The provisions of the Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . The issue pertaining to unfair labour practice was neither the subject-matter for decision nor was it decided in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] ."

The plea of the Corporation that the reason for not regularising the workmen concerned under the Certified Standing Orders of the Corporation is allegedly due to the fact that the appointment of the workmen concerned was made without following due procedure under the Recruitment Rules and that their appointments were illegal. This plea cannot be accepted by us in view of the legal principle laid down by this Court in the above decision, wherein it is clearly laid down that the Corporation cannot deny the rights of the workmen by taking the plea that their initial appointment was contrary to Articles 14 and 16 of the Constitution."

*(emphasis
supplied)*

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15. In view of above, it is accordingly observed that the Supreme Court has therefore, carefully created a special class of cases, wherein, the claim of unfair labour practice of continuing daily wagers/ad hoc employment/casual workers for long periods and regularization has withstood scrutiny by an Industrial Adjudicator under the Industrial Disputes Act, 1947.

16. Learned counsel for the appellant has drawn our attention to the para 17 of Umralla, wherein, the Supreme Court has mandated that a person who has completed 240 days of

continuous service, becomes entitled to regularization. The para 17 of the Judgment reads thus:-

“17. In view of the reasons stated supra and in the light of the facts and circumstances of the present case, we hold that the services of the concerned workmen are permanent in nature, since they have worked for more than 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record. Therefore, not making their services permanent by the appellant-Panchayat is erroneous and also amounts to error in law. Hence, the same cannot be allowed to sustain in law.”

17. In the present case, we are not talking of a few days or 240 days but a period of 43 years i.e. since the year 1972, when the petitioner has rendered satisfactory, blemishless and uninterrupted services to the respondent. To say the least, the denial of regular appointment to the appellant has resulted in depriving him of regular pay scale, emoluments as well as leave benefits etc to the appellant which tantamounts to an extremely unfair labour practice and exploitation of the services of the poor worker.”

29. Thus, in the light of the observations of the Supreme Court in **Ajaypal Singh (supra)**, **ONGC (supra)** and **Umralla Gram Panchayat (supra)** as also of this Court in **Ram Singh (supra)**, I find that the petitioner's reliance on the decision of the Supreme Court in **Uma Devi (supra)** and of this Court in **Anil Lamba (supra)** is wholly misconceived. In my opinion, once the Tribunal was of the view that the petitioner was indulging in unfair labour practice, it was well within its domain to pass an order directing the petitioner to regularize the respondents' services. The petitioner has failed to make out any ground to interfere with the discretion exercised by the Industrial Tribunal in directing the petitioners to regularize the services of the respondents/workmen. There is no gainsaying that the writ

jurisdiction and powers of superintendence of this Court have to be exercised only sparingly to ensure that the subordinate courts do not exceed their own jurisdiction and exercise it as and when required, or when there has been a manifest failure of justice, or when the principles of natural justice have been flouted. In my opinion, no such eventuality has occurred in the present case so as to warrant the exercise of powers of this Court under Articles 226 and 227 of the Constitution.

30. For the aforesaid reasons, the writ petitions being meritless are dismissed as such with no order as to costs.

MARCH 28, 2019

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(REKHA PALLI)
JUDGE