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

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Decided on: 14.02.2020

+ **W.P.(C) 5906/2018 & CM APPL. 23016/2018**

AMRISH KUMAR & ORS. Petitioners

Through: Mr. Rajiv Agrawal, Adv. with
Ms. Meghna De, Ms. Liu Gangmei, Advs.

versus

INDIAN INSTITUTE OF MASS COMMUNICATION. Respondent

Through: Mr. Gaurang Kanth, Standing Counsel
with Ms. Aarti A. Mehto, Adv. for UOI.
Mr. Amit Singh, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 6052/2020 (By R-1 for delay of 140 days in re-filing C/A)

1. For the reasons mentioned in the application, the delay is condoned.
2. The application stands disposed off.

W.P.(C) 5906/2018 & CM APPLs. 23016/2018, 23017/2018, 30979/2019

3. This petition impugns the order dated 01.05.2006 passed by the learned Labour Court in I.D. No. 143/2003 dismissing the claim of the petitioners for regularization of their services with effect from their initial date of appointment along with consequential benefits. It is not in dispute that they have been working with the respondent-management for more than

20 years without any break. Initially, they were paid minimum wages but later on subsequently their emoluments were enhanced to Basic Pay + D.A. The impugned order has relied upon the dicta of the Supreme Court in *Secretary, State of Karnataka and Others vs. Umadevi and Others*, (2006) 4 SCC 1, to the effect that daily wagers or ad hoc employees would not have a legal right to be made permanent, even though they have never been appointed in terms of the relevant rules. Therefore, it held that the workmen were not entitled to regularization. The learned counsel for the petitioners submits that the jurisprudence on the subject has developed further. He refers to the observation of the Supreme Court in para 53 of *Umadevi (supra)* which read as under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now

employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

4. It is also not in dispute that the petitioners were engaged as casual workers by the respondent and had been working for the respondent as under:

Sl. No.	Name and Designation	Date of Joining
1.	Shri Rajesh Kumar, Chowkidar	04.11.1997
2.	Shri Amrish Kumar, Chowkidar	20.02.1997
3.	Shri Subhash Chander, Chowkidar	07.03.1997
4.	Shri Bal Kishan, Chowkidar	26.03.1997
5.	Shri Sushil Kumar, Chowkidar	10.08.1997
6.	Ramesh Kumar, Chowkidar	13.03.1998
7.	Shri Kiran Pal, Chowkidar (since expired)	04.05.1998
8.	Shri Suresh Chandra, Messenger, Presently he is working as Computer Assistant in Computer Section	04.05.1998

5. This Court in *Project Dir. Dep. Of Rural Devel vs. Its workmen through D.P.V.V.I.E.UN*, W.P.(C) 17555/2005, decided on 28.03.2019, has held, *inter alia*, as under:-

“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 Umrula 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 causal 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 Umrula 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 reemployment 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)

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 *Umrula 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."

6. In the present case too, the workmen admittedly have been working for 23 years. It clearly tantamounts to unfair labour practice by denying them the benefits of regular services for 23 years. The objective of the Act is to prevent unfair labour practice which is defined in detail in 5th Schedule of the Industrial Disputes Act, 1947, with reference to section 2A. The specific definition applicable to the present case is clause 10 which reads as under:-

"10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

7. The facts of the instant case as discussed hereinabove clearly show that keeping the workmen in uninterrupted service for 23 years as casual workmen and denying them the status and privilege of permanent workmen, constitutes unfair labour practice which is illegal and needs to be quashed. Furthermore, similarly situated workmen of the respondent who worked in its other administrative unit in Orissa (Dhenkanal), for roughly half a century on *ad hoc* basis, have been directed by the Orissa High Court in *Basanta Kumar Sahoo vs. Union of India*, W.P.(C) 24759/2012, decided on 31.07.2017 to be regularized. The said judgment had referred to and relied upon *Umadevi (supra)* and *State of Karnataka and Ors. vs. M.L. Kesari*, (2010) 9 SCC 247. The SLP against the said judgment of the Orissa High Court was dismissed by the Supreme Court on 05.01.2018, therefore, it has attained finality. The beneficiary workmen in that case have become regular employees. The case of the present petitioners is identical. That being the position i.e. they had worked for almost 23 years; the employer was same; they had been working against the sanctioned posts; they were not considered as regular employees, therefore, the treatment meted out to them constitutes unfair labour practice. In the circumstances, their services too shall be regularized from initial date of joining, with all consequential benefits.

8. The petition is disposed off in the above terms.

9. A copy of this order be given *dasti* under the signature of the Court Master to the learned counsel for the parties.

NAJMI WAZIRI, J

FEBRUARY 14, 2020

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