

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP No. 776 of 2017 (O&M)

Date of decision: 07.02.2023

Devinder Mohan

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. A.P.S.Sidhu, Advocate for
Mr. Surinder Garg, Advocate for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.
Mr. Abhinav Singla, Advocate for respondents No. 2 and 3.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed seeking writ in the nature of Mandamus directing the respondents to regularize the services of the petitioner as he is continuously working for last more than 21 years. The petitioner was appointed as Clerk with respondent on 22.05.1995. His services were terminated w.e.f. 01.04.1997. He raised Industrial Dispute which was referred before the Labour Court vide Reference No. 219 of 2001. Vide Award dated 19.01.2012, the same stands answered in favour of the petitioner holding as under:

“In view of my findings on the aforementioned issues, instant reference is answered against the Management and in favour of the workman/claimant. The termination of the services of the workman w.e.f. 01.04.1997 are set aside. He is ordered to be reinstated with continuity of service. Beside, it he is also entitled to the back wages to the extent of 25%. He is further directed to submit his joining report with the Management within one month from the publication of the award. Management / respondents are also directed to make the payment of back wages within 3 months from the date of publication of the award. In case, payment is not made within

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stipulated period, workman/claimant shall be entitled to the interest @ 6% PA from the date of service of the demand notice i.e 02.02.1998. Parties are left to bear their own costs.”

2. Thus, the respondent cannot deny the fact that the petitioner has been in continuous employment since 22.05.1995. Petitioner relies upon Policy decision taken by State of Punjab dated 15.12.2006 whereby the State decided to regularize the services of the employees as one time measure subject to certain conditions which have been enumerated as under:

“While considering the cases for regularisation of the services of such irregularly appointed workers/employees as a one time measure, the following guidelines are to be followed in letter and spirit, namely:-

i) the employee should have worked for not less than 10 (Ten) years as on 10.4.2006 without the intervention of the orders of the Courts or Tribunals against duly sanctioned posts:

ii) the employee fulfills the minimum basic qualifications for the post against which he was appointed;

iii) it shall be certified by the competent authority that no supernumerary posts were created to retain the employees in service, when the persons were appointed on regular basis; and

iv) it shall be the duty of the Administrative Department that while considering the case of each employee, the orders of the Hon'ble Supreme Court of India passed in the aforesaid case are implemented in letter and spirit. It shall be ensured that there should be no further by passing of Constitutional requirements and regularizing or making permanent those, who were not appointed as per the said constitutional scheme.

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3. *Apart from the above, the worker/employee concerned should also fulfill the following requirements; that:*
- a) he possessed qualifications for the post at the time of original appointment and satisfied all eligibility conditions as per service rules;*
 - b) the work and conduct of the worker/employee through out has been satisfactory;*
 - c) a medical fitness certificate and documentary proof of date of birth as per standing instructions shall be obtained, if not obtained at the time of extending his appointment;*
 - d) his antecedents should be got verified from the Police Department as per Government instructions, if it was not done earlier; and*
 - e) the regularisation shall take effect from the date of orders to be issued and after determining Inter-seniority amongst the employees, regularised under this policy, with reference to continuous service, and they shall be placed below his employees, last appointed on regular basis after following proper procedure.”*

3. Learned counsel for the petitioner thus submits that in view of the Policy decision having been taken by State of Punjab and the same being applicable to its instrumentalities in terms of P-7, the petitioner is entitled to be considered for regularization of services under the said policy.

4. *Per contra*, learned counsel for respondents No. 2 and 3 submits that the petitioner being ineligible and the Policy of 2006 cannot claim regularization. Reference is being made to the covenant as contained in Clause (2)(i) to contend that the employee should have worked for not less than 10 years as on 10.04.2006 without the intervention of the order of the Court or Tribunal. The petitioner being beneficiary of the Award passed by

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the Industrial Tribunal dated 19.01.2012 cannot claim to have worked continuously for 10 years.

5. I have heard the counsel for the parties and gone through the record.

6. Admittedly, the petitioner was ordered to be re-instated and was awarded continuity of service by the Award passed by the Tribunal. The said Award *inter se* between the rights of the parties has become final.

7. Precisely, the issue involved in the present case was addressed by a Coordinate Bench in the case of ***Khajjan Singh and others vs. State of Haryana and others reported as 2015(2) RSJ 135***. Culling out the precise question arising for determination, the Bench held as under:-

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11. The vexed questions which arise for determination in the present set of matters can be crystallized as follows:-

- i. Whether the 'left out group' who were retrenched from daily wage manual service in contravention of the provisions of the Industrial Disputes Act, 1947 on reinstatement with continuity of service granted by the Labour Court would have a right to retroactive parity with the 'fortunate group' whose services were regularized under relevant policy instructions of the Government of Haryana by the department without Court intervention, and similarly situated workmen have been regularized by the employer itself then would they be entitled to regularization/permanency/quasi-permanency of their service tenure at par with their juniors by giving protection of article 14 of the Constitution of India to the deprived lot on ground of unfair discrimination?

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- ii. Whether the ratio of Umadevi renders the 'left out group' legally incapable of being granted the concession/benefit of regularization on the strength of the policies of regularization dated 7th March, 1996, 18th March, 1996 and 1st January, 2003 traceable to article 162 of The Constitution which stand was withdrawn vide notification dated 13th April, 2007 following Umadevi, and thereafter under notification dated 29th July, 2011 formulated under article 209 of the Constitution read with clause 6 of the Haryana Government, General Administration Department (General Services) notification dated 28th January, 1970 provided they have completed 10 years of service as on 10th April 1996 counted backward from 10th April 2006, the interpreted and so stated fate of decision in Umadevi?
- iii. Whether Umadevi stands distinguished and explained in ***Maharashtra State Road Transport Corporation Ltd. v. Casteribe Rajya Parivahan Karamchari Sanghalana; (2009) 8 SCC 556*** (in short “Casteribe”) which culls out the ratio of Umadevi and holds it as a verdict not applicable to industrial workers or 'workmen' by definition, to whom the protective rights flowing from Entry 10 of the Fifth Schedule to the Industrial Disputes Act, 1947 employing by way of unfair labour practice: “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” [emphasis supplied] and thus by reason of unfair and hostile exploitation by the State and its organs over an unjustified period of time spent on daily-wages with no security of tenure, then can regularization orders be passed

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outside Labour Court adjudication?

- iv. Whether, the Writ Court would be justified in applying the principles laid down in *Casteribe* to the present case by resort to principles of unfair labour practice, which is a species of unfair discrimination, malafides, bias and the like, known to service law which are actionable in writ proceedings and capable of determination in extraordinary jurisdiction exercised by the Writ Court without relegating aggrieved person to less efficacious and protracted alternative remedy under the Industrial Disputes Act, 1947 obviating the necessity of recording of evidence to prove unfair labour practice in a Labour Court and to thus direct the State to regularize the services of the 'left out group' retrospectively to remove hostile and invidious discrimination between the 'fortunate group' and the 'left out group' and put them on equal footing to remove inequality of opportunity amongst them in doing justice to the parties.
- v. Whether the Court exercising writ jurisdiction against arbitrary and discriminatory administrative orders, rejecting requests for regularization, as in the present case, is constitutionally obliged to treat discrimination as per se amenable to primary review as explained by the Supreme Court in ***Om Kumar v. Union of India, in Delhi Development Authority v. Skipper Construction; 2001 (2) SCC 386***; (for short “Om Kumar”) and to apply the principle in direct intervention in cases where the Writ Court is confronted with unfair discrimination practiced by State, then should the Court perform its constitutional duty to remove unfair discrimination brought before it by person aggrieved keeping in mind the well recognized

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parts of article 14 of the Constitution, as explained on Om Kumar namely; one of arbitrariness and one of unfair discrimination both tested on different parameters, one on proportionality and Wednesbury rules of arbitrariness by applying the test of secondary review of arbitrary administrative action while the other, on principles of primary review in a case of unfair and actionable discrimination and come to the rescue of the person unfairly treated and to restore to them equal protection by affirmative action within the same homogenous group levelling the 'fortunate' and the 'left out group' retroactively due to continuity of service awarded by the Labour Court, to maintain the balance of justice?

- vi. Whether those as against whom unfair discrimination is pleaded and practiced i.e. the 'fortunate group' who continued to serve on daily wages then have they to be treated as regular employees the moment orders of regularization were passed in their favour erasing their past illegal or irregular service as daily-wage labourers reckonable from a fresh starting point, then further would such event activate a right on the 'left out group' to affirmatively demand similar treatment retrospectively by deeming that they were never retrenched and now by virtue of Labour Court awards granting continuity of service would give them the benefit of deemed legal fiction of continuous service assuming them to be working on the cutoff date fixed by policy circulars, when the 'fortunate group' were regularized not by Court orders but by the Department of the Government on their own volition?

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- vii. Whether daily-wage labour when not holding any public posts can be deprived of their claim to declaration on the plea that their appointments/engagements are 'illegal' and 'irregular' and not in consonance with the constitutional scheme of making appointments, where there are no statutory recruitment rules framed under proviso to article 309 of the Constitution or other recruitment rules and bye laws made by Government or statutory bodies framed in this behalf and such an engagement is an exception to the recruitment rule to public posts governed by rules and therefore, deserve to be dealt with by different standards, one on strict scrutiny of rules, the other on relaxed standards de hors rules?
- viii. Whether formal orders of regularization of services can be issued only on availability of Group D cadre posts or on creation of posts and in absence thereof then can the right of the petitioners, the 'left out group' be defeated or postponed in a case of ex facie unfair discrimination, when fundamental principles of non- discrimination is guaranteed as a fundamental right under article 14 of the Constitution, and further whether the more appropriate course should be adopted to put an end to continued fundamental right deprivation by directing retroactive parity to remove unfair discrimination through a supernumerary arrangement as the only possible method to cure inequality when State acted contrary to article 14 of the Constitution?

8. The aforesaid issues were answered in the enlightening judgment as under:-

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62. After I had prepared the judgment after reserving orders I had anxiously thought how to proceed with the matter and what to do on the sensitive issues involved and whether I should distinguish Channi and follow Sukhminder Kaur and to distinguish Umadevi by Casteribe or to refer the eight questions formulated above to a larger Bench to resolve the conflict pointed out by Mr. Nehra when the recent verdict of the Supreme Court in ***Hari Nandan Prasad and another v. Employer I/R to Mangmt. of FCI and another; 2014 (2) SCT 234*** came to my notice where the Supreme Court after noticing Casteribe and Umadevi in sharp departure of Channi (both authored by the Hon'ble Mr. Justice A.K.Sikri, one before when His Lordship adorned this Court as its Chief Justice, the other after His Lordship's elevation to the Supreme Court) in para. 34 resolved the vexed question of discrimination by holding as next follows :-

“34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the

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concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. 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. This landmark insight in the judgment has turned the tide. The judgment in para. 34 delivered by a three judge bench eminently extends the frontiers of industrial jurisprudence as hitherto never before. It is in the same strain as *U.P.S.E.B vs. Pooran Chand Pandey, 2007 (11) SCC 92*, disapproved by the three judge bench in *Official Liquidator v. Dayanand and others* which is a decision prior to Casteribe.

64. However Umadevi (3) has now to be understood in its application to labour jurisprudence as one keeping in mind the dictum of both Casteribe and Hari Nandan Prasad, the former from the point of view of unfair labour practice, the latter from the standpoint of unfair discrimination while Umadevi stands beyond the pale of labour law as contradistinguished from mainline service law jurisprudence and their subtle difference. Labour law was delineated in Casteribe. But yet the Supreme Court did not go full throttle and circumscribed its

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decision on service law principles weighed down by principles of vacancies and the nature of initial appointments bound by the constitution bench principles laid down in Umadevi (3). Nevertheless, the exception carved out in Hari Nandan Prasad (para 34) is where the foothold lies and the take off point of the present batch of cases now rests. 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 asunder 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

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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.

67. However, I may add a word of caution here, I have not touched upon in this judgment the issue of regularization arising in cases of questionable appointments to posts sanctioned on the cadre strength of units of service in the departments of Government, besides the instrumentalities of State and nothing said here would apply to the other set of pending cases involving claims of regularization made by holders of posts in Class III service which are to be decided on their own facts and the laws applicable.

68. Since the Judgment of the Supreme Court in Hari Nandan Prasad in paragraph 34 now holds the roost, the apparent conflict caused by the verdict of Channi, in following Uma Devi and Rajinder Kumar overlooking the subsequent view of the Supreme Court in Casteribe,

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pales into insignificance. Accordingly, the already formulated view of this Court, which is now reflected in the Supreme Court Judgment of Hari Nandan Prasad, stands fortified and buttressed. This obviates any necessity of any alleged conflict between earlier views of this Court to be reconciled. Having drawn strength from the latest view of the Supreme Court in Hari Nandan Prasad, it may be safe for me to conclude that there no longer exists any conflict of opinion in the interpretation of Umadevi. Therefore, I find no reason to accede to the request of Mr. Nehra for the matter to be placed before a larger bench of this Court as the issue seems resolved by the Supreme Court itself in the illuminating view in Hari Nandan Prasad.

69. The nine questions crystallized above indicate internally what their answers might be but with one broad thread running through all of them indicating a case for grant of positive retroactive parity and to answer if this relief at all deserves to be given to the petitioners to remove the vice of unfair discrimination even if it is through the process of making a supernumerary arrangement to give effect to the cardinal principle of equality under the law and of equal protection of the laws. A parity which is measured by the laws founded on State policies of which the beneficiaries were the fortunate group, then could the petitioners be lawfully deprived of those social and material benefits. The rights of the petitioners who are daily wage workers accrue and flow from the Labour Court awards made in their favour granting to them a continuity of service. However, where continuity of service is not granted by the Labour Court and such awards have attained finality, the period for which benefit of past service when not granted, would stand deprived of the reckonable period for intents and

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purposes. In the present cases, the petitioners would be deemed to have been in service as though the adverse retrenchment orders were never passed. The State was not able to show in any of these cases the rules of service applicable to the initial engagement of the petitioners on daily wage in the Forest and in the Irrigation Department. Therefore, the question of their illegal or irregular appointments is not a debatable issue in these batch of cases and a strong presumption would go in favour of the petitioners that their initial appointments were not contrary to law given that power to employ them was posited in the State to offer them daily wage employment albeit through its local functionaries with power derived from manuals to operate the muster roll system. 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

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becoming the *raison d'être* 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 like the present one, 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

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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.

71. Before leaving I would say a few more words on the principles of primary and secondary review of administrative action which was introduced, if I may be correct in saying so, by M.Jagannadha Rao, J. some years before Om Kumar was delivered by his Lordship in *Union of India v. G.Ganayutham; (1997) 7 SCC 463*. The legal position on the subject was summed up in para. 31 of the report which to my mind is capable of universal application in administrative law and subject matter labour law. The question left open in sub para. 4 (b) in Ganayutham appears to have been answered exhaustively in Om Kumar after noticing judicial thought processes expounded in judgments by Judges sitting at the apex level in foreign Courts on the subject in the United Kingdom and in the United States of America etc. Para. 31 enlightens with these guiding words:-

“31. The current position of proportionality in administrative law in England and India can be summarised as follows :

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The

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Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bonafide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay, Brind and Smith, as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to CWP No.10017 of 2011 and connected petitions 68 find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he had done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the

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fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive

action affecting fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Article 19, 21 etc. are involved and not for Article 14." (emphasis added)

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

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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.”

9. The matter further went before Division Bench in **LPA No.1903 of 2014** titled as '**State of Haryana and others vs. Jiyaji Sharma**' decided on 21.01.2015, wherein the Division Bench held as under:-

“3. As we mentioned earlier the appellant was employed with effect from 19.08.1995. The termination of his services on 31.05.1996 were held to be illegal and he was reinstated in service. Thus, as on 31.09.2003, the respondent must be deemed to have been in service. Under the policy of 01.10.2003, the petitioner was entitled to have his services regularized. All other employees similarly situated whose services had not been terminated were in fact granted the benefit of regularization under the policy of 01.10.2003. The termination of the respondent's services having been held to be illegal and having been set aside, he must also be deemed to have been in service on 01.10.2003 and entitled to the benefits of the policy on par with the others. The petitioner cannot be denied the benefits of the policy on par with the others similarly situated for no fault of his namely and on account of the appellants having issued an illegal order of termination. The Supreme Court in **Hari Nandan Prasad and another Versus Employer I/R to Mangmt. of FCI and another**, held as follows:-

“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

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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”.

4. In the circumstances, the appeal is dismissed.

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10. In view of above and in the considered opinion of this Court, the objection raised by respondent-State in declining the claim of the petitioner for regularization cannot be sustained. The objection w.r.t. the petitioner being barred under the Policy of regularization for having been beneficiary of award passed by the Industrial Tribunal is held to be unsustainable. Respondents are directed to consider the case of the petitioner for regularization within a period of 03 months from the date of receipt of certified copy of this order.

11. Needless to say, in case the petitioner is found to be entitled for regularization, his claim shall be entertained w.e.f. the date persons appointed alongwith petitioner i.e. in the year 1995 were regularized.

12. Disposed off accordingly.

07.02.2023

Dinesh

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes