



2024:DHC:652



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

% **Date of order : 15th January, 2024**

+ **W.P.(C) 23276/2005 and CM APPL. Nos. 15293/2005 and 44045/2023**

JAMIA MILLIA ISLAMIA

..... Petitioner

Through: **Mr. Prithish Sabharwal, Standing Counsel**

versus

SHABBIR HUSSAIN

..... Respondent

Through: **Mr. Jawahar Raja, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226/227 of the Constitution of India, seeks the following reliefs:

“a) declare the Award in I.D. No. 259/96/89 notified on 24.05.05 and made enforceable w.e.f. 23.6.05 as non - est and bad in law;

b) Pass such other or further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

a) The respondent workman had been discharging his duties as a ‘Supervisor’ in the horticulture department of the



petitioner University namely Jamia Milia , since his initial appointment on 17th May, 1984, until 15th February, 1988.

- b) Thereafter, vide office order dated 15th February, 1988, the respondent workman was directed by the petitioner University to work as a Clerk under Assistant Engineer (Campus).
- c) Meanwhile, vide Advertisement bearing No. 7/1985-86, dated 15th January, 1986, the petitioner University had invited applications for the appointment to various posts including the post of a Garden Supervisor Pursuant to the same, the petitioner management constituted a Selection Committee to select the qualified candidates to the post of Garden Supervisor. Subsequently, vide notice dated 21st December, 1988 the respondent workman was invited to participate in the selection process, however, the respondent workman, served a legal demand notice dated 24th November, 1986, to the petitioner through his union, thereby, seeking regularization of his services.
- d) Thereafter, vide notification No.24 (868)/89 – Lab 18000 dated 3rd March, 1989, the respondent workman raised a grievance before the Appropriate Authority, Delhi and subsequently dispute bearing IA No. 259/96/89 was referred to the learned Industrial Tribunal for adjudication on the



issue of regularization of the services of the respondent workman.

- e) Further, vide notification No.24 (1091) 189-Lab./9712-17 dated 28th March, 1989 the Appropriate Authority/Government made another reference of the industrial dispute between the management of the petitioner University and the respondent workman, to the Labour Court, wherein, it was tasked with adjudicating whether the respondent workman is entitled to be posted as a Garden Supervisor instead of a Clerk as he had been working on the former post since 17th May, 1984.
- f) The aforesaid dispute was registered as ID No. 11/89, wherein, the Presiding Officer passed an award dated 1st November, 2002, in favor of the respondent workman stating that he is entitled to be posted as a Garden Supervisor instead of clerk as he was working since 17th May, 1984 and directed the management to set aside the office order dated 15th February, 1988 and post the workman in the Horticulture Department as a Garden Supervisor.
- g) During the pendency of the above stated dispute, the respondent workman also filed a Suit bearing No. 576/88 dated 8th January, 1991, challenging the recruitment/selection process for the post of a Garden



Supervisor, as formulated by the petitioner. However, the said suit was dismissed by the Court.

- h) Subsequently, the petitioner University issued an Office Order dated 14th March, 2005 implementing the award dated 1st January, 2002 and posted the respondent Workman as a Garden Supervisor (Horticulture Department) in the pay scale of Rs. 4500/- -7000/-.
- i) Thereafter, the learned Industrial Tribunal in IA No. 259/96/89, passed the impugned award dated 4th October, 2004, published on 24th May, 2005, in favor of the respondent workman, thereby, directing the management to regularize the services of the workman as a garden supervisor in the horticulture department in the pay scale of Rs. 425/- -700/-, w.e.f. June, 1994, with all consequential benefits.
- j) Upon receipt of a complaint by the respondent workman under Section 33C (1) of the Industrial Disputes Act, 1947 (hereinafter “the Act”), the petitioner University was served with a notice dated 26th September, 2005, by the Assistant Labour Officer of the Labour Implementation Cell to implement the impugned award dated 4th October, 2004.
- k) Therefore, being aggrieved by the impugned award, the petitioner University has assailed the same by way of the



instant writ petition under Article 226/227 of the Constitution of India.

3. The learned counsel on behalf of the petitioner University submitted that learned Court below erred in passing the impugned award as the same has been passed without taking into consideration the entire facts and circumstances.
4. It is submitted that the learned Court below had failed to appreciate that the petitioner University is a State within the meaning of Article 12 of the Constitution and is thus bound by the constitutional mandate of Article 16 'equality of opportunity'. Therefore, all appointments are carried out by way of an open market selection wherein the best candidature is selected to fill the vacancy.
5. It is further submitted that an advertisement inviting applications *inter alia* to the post of 'Garden Supervisor' was issued by the petitioner, in pursuance to which the respondent workman's candidature despite lacking requisite qualifications was invited for consideration before the Selection Committee on 21st December, 1988. However, the respondent chose not to appear, rather challenged the recruitment process before a Civil Court which was further dismissed.
6. It is submitted that the respondent workman does not meet the essential qualifications as stated in the advertisement which is B.Sc. Agriculture/Horticulture or 10 years of intensive practical experience in agriculture or Horticulture. Since, the workman lacks the requisite eligibility as his total effective work experience amounts to less than 4 years



(from 15th April, 1984 to 15th February, 1988), therefore, the respondent was transferred under the Assistant Engineer (Campus Maintenance) vide office order dated 15th February, 1988.

7. It is submitted that in order to maintain industrial peace and harmonious relations between the management and the workmen, the award dated 1st November, 2002, was duly implemented and the petitioner University appointed the respondent to the post of a Garden Supervisor (Horticulture Department) in the pay scale of Rs. 4500/- -7000/- and the respondent workman has been working as a Garden Supervisor w.e.f. 6th April, 2005.

8. It is submitted that the impugned award is arbitrary and suffers from illegality as the petitioner University does not have a post available to regularize the respondent workman and no regularization can be *de-hors* the rules.

9. It is submitted that the impugned award is bad in law and against the settled principles of service jurisprudence as it fails to appreciate that a 'back-door entry' in any service cannot be sanction in light of a catena of judgments passed by the Hon'ble Supreme Court.

10. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the relief be granted, as prayed.

11. *Per contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition and submitted that the same is liable to be dismissed being devoid of any merits.



12. It is submitted that the respondent workman has been performing duties similar to the regular employees of the petitioner, however, he has been treated as a daily wage employee. The respondent has repeatedly sought the petitioner to regularize him, but to no avail and hence, the respondent served a legal demand notice dated 24th November, 1986.

13. It is submitted that the petitioner has challenged the award dated 4th October, 2004, wherein, the petitioner was directed to regularize the respondent workman in the service as a Garden Supervisor. As rightly observed in the impugned award, although the respondent may not possess the requisite educational qualification, however, he is entitled to be regularized based on his long-standing service on the said post.

14. It is submitted that the petitioner University was served with a demand notice dated 9th July, 2005 seeking implementation of the impugned award, to which the petitioner never responded. Since, there existed no alternative remedy, the respondent preferred an application under Section 33(C)(1) of the Act, seeking recovery of pending differential in wage.

15. It is submitted that the impugned award has been passed after duly considering the entire facts and circumstances available on its record, and there is no illegality or infirmity thereto.

16. It is submitted that the learned Tribunal has passed the impugned award in accordance with the law and there is no merit in the contentions advanced by the petitioner which would amount to any infirmity in the impugned award.



17. It is further submitted that as per the law settled by the Hon'ble Supreme Court, an award of the Industrial Tribunal cannot be intervened with unless the same suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law.

18. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the instant petition, being devoid of any merits, may be dismissed.

19. Heard the learned counsel for the parties and perused the records.

20. The present petitioner has approached this Court seeking setting aside of the impugned award dated 4th October, 2004, published on 24th May, 2005, passed by the learned Industrial Tribunal in favor of the respondent workman, whereby, the petitioner University was directed to regularize the workman as a Garden Supervisor in the Horticulture Department in the pay scale of Rs. 425/- -700/- w.e.f. June, 1994, with all the consequential benefits. The relevant paragraphs of the impugned award are reproduced herein below:

“..ISSUE NO. 1

9. The onus of proving this issue was on the management and the management in its written submissions have not stated anything that the management is not an industry. On the other hand, in the written submissions made on behalf of the workman, it is stated that by applying the triple test enunciated in Bangalore Water Supply case, it is settled position of law that educational institution are covered under the definition of 2 (a) of the I.D. Act. So, it hold that the management is an industry



and this issue is thus decided in favour of the workman and against the management.

ISSUE NO. 2, 5 & 7

10. Issue No. 2, 5 and 7 are taken up collectively as they interconnected and interrelated. It has been submitted by AR on the workman in written submissions that workman examined WW2 Sh. Rajiv Aggarwal, who has filed his affidavit along with resolution of espousal, copy of this annexed with the affidavit. He was duly cross examined by AR of the management and it is duly proved that the case of the workman was properly espoused by Delhi Labour Union. In the written submissions, it is further stated that the workman is a member of Delhi Labour Union and Labour Union in its resolution dated 05.10.88 filed along with the affidavit of Rajiv Aggarwal unanimously resolved to espouse the dispute of the workman concerned for his regularisation on the post of Garden Supervisor and, so, Sh. C.P. Aggarwal, the then President to Delhi Labour Union was the competent person to file the statement of claim on behalf of the workman as the same is permitted under section (K) of the ID. Act. In the written submissions it is further stated that onus to prove issue No. 7, discharged by the workman by placing resolution dated 05.10.88 on the file. The workman is the member of Delhi Labour Union and late Sh. C.P. Aggarwal was the president at that time, who was fully competent to sign and verify the dispute with regard to regularisation of the workman.

11. On the other hand, in the written submissions, it is stated that the workman in his cross-examination has stated that he has authorized Sh. C.P. Aggarwal to sign the statement of claim and that his authorisation is in the court file. There is no specific authorisation given to Sh. C.P. Aggarwal. It is further stated that the workman has admitted absence of any authorisation made in favour of the person who has signed and



verified the statement of claim. In this regard, it may be mentioned that there is an authority letter along with statement of claim, which is signed by the workman. As per this authority letter late Sh. C.P. Aggarwal was authorised to espouse the cause of the present workman and to sing and verify the claim petition. Even otherwise, the workman has come in the witness box and has been examined as 1. It is further mentioned in the written submissions that workman in his cross examination has admitted that nothing in writing was given to the union by him to raise a de dispute on his behalf even in his cross examination has admitted that he cannot show any document on court record that the workman had requested the union to espouse the present cause. He further stated that he cannot show any document from the record showing that the workman had authorised the union to sign the statement of claim on his behalf. In this regard, it may be mentioned that there is a resolution of the executive committee of Delhi Labour, union dated 5.10.1988 whereby, it was resolved to raise an industrial dispute in favour of Sh. Shabbir Hussain of Horticulture Department of Jamia Millia Islamia demanding thereby his regularisation on the post of Garden Supervisor. The said resolution is attached with the affidavit of Sh. Rajiv Aggarwal. The submissions made by AR of the management that issue No. 2, 5 & 7 are liable to be answered against the workman and on this very basis, in the absence of statement of Claim and espousal, reference is liable to be answered against the workman. This submission made by AR of the management does not find favour with me as to my mind the statement of claim has been properly signed and verified and the union has properly espoused the cause of the workman and late Sh. C.P. Aggarwal was competent to sign and verify the statement of claim. In view of my above discussion, I decide the aforesaid issues in favour of the workman and against the management.

ISSUE NO. 3



12. Onus to prove this issue was on the management but, in the written submissions, nothing has been said about the said issue. In the evidence led by the management also nothing has been said about this issue. Even otherwise, this question is question of law and there are number of judgements of Hon'ble Supreme Court of India and Hon'ble High Court of Delhi that Industrial Tribunal cannot go into the question of legality and illegality of the reference, if the management was aggrieved by the reference it should have challenged the same in the Hon'ble High Court. In view of this, issue No. 3 is decided in favour of the workman and against the management.

ISSUE NO. 4

13. The onus to prove this issue of demand notice was on the workman, which has been duly discharged by filing of copy of legal demand notice Ex. 1/7 along with postal receipt and acknowledgement card which are Ex 1/8 and Ex 1/9 respectively. The workman further served legal demand notices which are exhibited on record as Ex. 1/14 & Ex. 1/15. The notice Ex. 1/15 which was received back from the management and the copy of the registered envelope is Ex. 1/16. The workman further served a legal demand notice EX. 1/17 & Ex. 1/18, which were duly served on the management as is evident from the copy of postal receipt and acknowledgement card Ex.1/19 & EX.1/20. This proves that proper demand notice was served upon the management.

14. M-1 in his affidavit Ex.M1/A has stated that no valid or proper demand notice was ever received by the respondent university. Similarly, M-2 in his affidavit E.M2/a did not state that any demand notice was not received by the management. There has been lengthy cross examination of 1, but no suggestion has been put to this witness that no demand notice has been served on the management before raising the present



dispute. Even otherwise, it is not in dispute that conciliation proceedings had taken place and the management filed its reply/written statement, copy of which has been proved on the file as Ex. 1/12, which is sufficient proof of notice of demand. Even photocopy of the postal receipt Ex.1/19 and registered A.E. Ex. 1/10,. Which is proved beyond doubt that demand Notice was served upon the management. Accordingly, I am of the considered opinion that proper demand notice was served upon the management and as such, this issue is decided in favour of the workman and against the management.

ISSUE NO. 6

15. It is mentioned in the written submissions that the workman has suppressed of material particulars. It is mentioned that the post of Garden Supervisor was advertised vide no. 7 of 1985 - 86 issued by the management and admitted by the workman. At page No. 4 item No. 12, the requisite qualifications for the post of Garden Supervisor are mentioned which in brief are B.Sc. Agriculture/Horticulture or a person with 10 years of intensive practical experience in agriculture or horticulture. The well man in the statement of Claim or in his deposition, does not even mention about his qualifications, which amounts to suppression of material facts from the court and it is disentitles him to any relief to which he even otherwise, is not entitled. It is further mentioned that the workman has nowhere alleged about he having ever applied for or having ever been selected or appointed as Garden Supervisor or ever drawing wages of the said post. However, in the cross examination, the workman has admitted that "My qualifications are BA., B.Ed, with Horticulture. It is correct that the requirements for the post of Garden Supervisor are B.Sc. Agriculture or 10 year's experience. It is correct that at the time of raising the dispute neither I was having 10 years experience nor I was having the qualification of B.Sc." This fact is further confirmed by M2,



who has deposed that the Respondent University never selected or appointed Sh. Shabbir Hussain at any time as Garden Supervisor in its horticulture department. It is further mentioned that the workman has failed to produce any letter of appointment to the post of Garden Supervisor. It is further mentioned that M2 has deposed that "Upon the regular post of Garden Supervisor being advertised subsequently for appointment of a candidate with requisite qualification and expertise, appointment to the said post was made after adopting the requisite procedure. Sh. Shabbir Hussain, who though do not possess the requisite qualification and experience for being considered for selection to the post of Garden supervisor was also invited by the Selection Committee in view of his alleged eligibility for being considered to the said post. He, however, did not appear before the selection committee and in fact challenged the same before civil Court while did not grant any relief to the workman and his case was dismissed". These were the material facts which have been suppressed by the workman, in this regard, it may be mentioned that the workman has placed on the court file letter Ex. 1/3 dated 03.06.1984 from one Sohrab Ali Addressed to Registrar, engaging Sh. Shabbir Hussain as supervisor in horticulture department as per the noting on this letter permitted to be engaged on daily wages as applicable to graduate, till further orders. There is also another letter Ex1/4 written by Mr. Sohrab Ali to Registrar and there is an endorsement that agreed as above to be engaged on daily wages as per this present terms. These letters show that he had been working in horticulture department as supervisor on daily wages. The workman has claimed regularisation only on the basis of his experience in the field of horticulture. To my mind, nothing has been suppressed by the workman, so, this issue is decided in favour of the workman and against the management.

ISSUE NO. 8



16. In the written submissions, it is stated that the workman is entitled for regularisation as supervisor in horticulture department in the pay scale of Rs.425 - 700 w.e.f. 17.05.84 as it has been proved on the file that he has been working as garden supervisor. The workman has placed various documents Ex. 1/2 to Ex. 1/6 on record, which clearly show that the workman has been performing the duties of garden supervisor to the entire satisfaction of his superiors. The only contention of the management is that the workman is not eligible for the post of garden supervisor. It is further mentioned in the written submissions that the contention of the management is not tenable in view of the judgment of **Hon'ble Supreme Court reported in 1990 SCC (L&S) 174**, which reads "the initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for the considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial breaks in service for short period/ periods created by the respondent, in the circumstances, would be sufficient for confirmation ". Reliance has also placed on **2003 (v) AD (Supreme Court) Page 407**, wherein it has been held by the Hon'ble Supreme Court that "It is not good for an ideal employer to avoid liability and deny to give what is legally due to him. Defending such genuine and legal claims on technicalities, would only result in great injustice". On the basis of these submissions it has been submitted that an award be passed in favour of the workman ordering him having been regularised as garden supervisor in the proper pay scales. In this regard, in the written submissions, it is mentioned that the workman was working as a daily wager and was being paid wages in accordance with the law as per the notification issued



from time to time under the provisions of Minimum wages Act. It is also mentioned that the workman does not possess the requisite qualifications as he is a simply B.A./B.Ed. whereas, he should have been B.Sc. in horticulture. It is further stated that since the workman does not possess requisite qualification and expertise, so, regularisation of the workman to the post of garden supervisor is unwarranted. It is also mentioned that the workman in his cross examination has admitted that till the year 1994, there was one post of garden supervisor in horticulture department, which has been increased to two posts and Mohd. Ali is the garden superintendent. From the aforesaid submissions, it has been stated that the workman cannot claim to be entitled to be regularised to such post in view of the aforesaid submissions.

17. It is not in dispute that the workman was engaged as daily wagger in horticulture department w.e.f. 17.05.84. It is also not in dispute that since then he has been working in the horticulture department except for brief period when he was transferred from horticulture department to building department. I have been informed by AR of the workman that an industrial dispute was raised by the workman regarding his alleged transfer to building department as clerk, which has been quashed by Industrial Tribunal No. III vide his award dated 01.11.02. It is also not in dispute that at the time when he was initially engaged as daily wagger, he was not possess the requisite qualification. As per the case of the management, the requisite qualification of a garden supervisor are B.Sc. Agriculture Horticulture or a person with 10 years intensive practical experience in agriculture or horticulture. It is also not in dispute that the qualification of the present workman were B.A. B.Ed. with horticulture. Even, if, it be presumed that at the time when the workman raised the present dispute, he was nor possess the requisite qualification of 10 years intensive practical experience in agriculture or horticulture, but, since he



is working from May, 1984, he acquired the said intensive practical experience in the year 1994. In view of the judgment relied upon by AR of the workman reported 1990 see (L&S) 174, the workman was not possess initially the minimum qualification at the time of his initial entry into the service, but, with the passage of time, he has acquired requisite 10 years experience from the time , 1984, it can be safely said that the workman has acquired the requisite qualification. The judgment relied upon by AR of the workman is fully applicable to the facts of present case. To my mind, 10 years experience acquired by the workman from 1984 to 1994 fulfils the criteria of requisite qualification prescribed for the post of garden supervisor. Reliance can also be placed on the judgment referred by AR of the workman reported in 2003 (V) AD SC Page 407, wherein, it has been held, that it is not good for an ideal employer to avoid liability and deny to give what is legally due to him. To my mind, this judgment rightly and directly applies to the facts of the present case. The management should not deny him the benefit of regularisation in the service from June, 1994, when he has acquired the requisite qualification.

18. In view of above discussion, I hereby pass an award in favour of the workman and against the management, directing the management to regularise the workman as garden supervisor in horticulture department in the pay scale of Rs.425-700 w.e.f. June, 1994 with all consequential benefits from the said a date onwards till date. The management is directed to comply within two months from the date of publication of award, failing which, the workman shall be entitled to interest @ 9% per annum on the amount due to the workman. It is ordered accordingly...”

21. The learned Industrial Tribunal in its award as reproduced herein above, opined that the workman is entitled to be regularized as a Garden



Supervisor in the Horticulture Department with all consequential benefits. The findings arrived at, have been reasoned by analyzing *inter alia* that at the relevant time the workman did not possess the requisite qualification but since then the workman has acquired work experience of 10 years by working from the year 1984 to 1994; thus, fulfilling the necessary criteria prescribed for the post of garden supervisor.

22. At this stage, it is imperative to understand the scope of a writ Court's jurisdiction in interfering with the labour or workman disputes which have been already adjudicated by a competent forum. The Hon'ble Supreme Court in a catena of cases has reiterated time and again that the Labour Court/Industrial Tribunal is a final Court of facts in the disputes between the labour or workman and employer or an industry.

23. The Hon'ble Supreme Court in *Hindustan Tin Works v. Employees*, (1979) 2 SCC 80, dealt with the aspect of perversity by the Labour Court in appreciation of facts wherein, it observed, that if on the face of the record, the High Court observes that the findings of the Labour Court are not based upon some legal evidence, it may go into the question of fact adjudicated and concluded by the Labour Court and exercise its powers vested under Article 226 of the Constitution of India. Whereas, in the event, the findings are based upon legal evidence and on the face of the record it seems no error has occurred, the writ Court shall not go into the factual disagreements and the findings that were based on those disputes. The relevant paragraphs of the said judgment have been reproduced below:

“12. Normally, the Labour Court or the Industrial Tribunal, as



the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

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9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a



result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be



awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct.”

24. Further, in the judgment of ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, the Hon'ble Supreme Court on the aspect of finding of the facts without evidence, observed that if on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon “no evidence”, there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. Similar findings have also been asserted in ***Iswar Lal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd.***, (2014) 6 SCC 434.

25. With reference to the cases discussed above, it can be concluded that, *firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Industrial Tribunal has adjudicated



after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing.

26. In view of the observations stated above, it can be concluded that the jurisdiction of a High Court to decide such petitions is limited to a supervisory capacity and not as an appellate Court. This Court is further of the view that as the scope of its writ jurisdiction is limited and is to be exercised sparingly, this Court cannot undertake an exercise, impermissible for this Court in exercising the writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions on pure questions of fact, as this Court is not in an appellate jurisdiction over the awards passed by the learned Industrial Tribunal.

27. At this stage, this Court deems it appropriate to chart out the aspect of regularizing the services of a workman by an Industrial Tribunal considering the same is under challenge in the instant petition.

28. The Hon'ble Supreme Court in ***ONGC Ltd. v. Petroleum Coal Labour Union***, (2015) 6 SCC 494 observed that the Tribunal possesses powers to adjudicate upon such an industrial dispute and impose upon the employer certain new obligations to strike a balance and secure industrial



peace and harmony between the employer and workmen, ultimately delivering social justice. The relevant paragraphs of the judgment are reproduced herein below:

“10. 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.

11. The learned Single Judge on appreciation of the facts, circumstances and the legal contentions urged on behalf of both the parties held that the dispute between the parties regarding non-regularisation of the workmen concerned falls within the scope of industrial dispute as defined under Section 2(k) of the Act. It is further held that the workmen concerned are all victims of unfair labour practice having been employed by the Corporation for several years on temporary basis and even though they were not appointed by following the procedure laid down by the Corporation for recruitment to such posts, they were entitled for regularisation and that their appointment cannot be stated to be illegal. With the above findings, the writ petition was dismissed on merits by the learned Single Judge of the High Court by its judgment and order dated 4-1-2011 [ONGC Ltd. v. Petroleum Coal Labour Union, WP No. 1846 of 2011, order dated 4-1-2011 (Mad)].



12. The said judgment and order of the learned Single Judge was challenged by the Corporation by filing Writ Appeal No. 1006 of 2011 before the Division Bench of the High Court raising certain questions of law. After considering the facts, circumstances and nature of the evidence on record which was placed before the Tribunal, the same was appreciated by the learned Single Judge; the learned Division Bench of the High Court held that the appointment of the workmen concerned by the Corporation cannot be termed as illegal appointment, but was only an irregular appointment and therefore, they were entitled for regularisation in their services having been employed on temporary basis and having completed more than 240 days in the calendar year subsequent to 13-1-1988. Therefore, it was held by the learned Division Bench of the High Court that no justifiable or reasonable grounds were found for it to interfere with the judgment and order passed by the learned Single Judge of the High Court. The writ appeal of the Corporation was dismissed [ONGC Ltd. v. Petroleum Coal Labour Union, 2011 SCC OnLine Mad 1150] accordingly.

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Whether jurisdiction of the Tribunal to direct the Corporation to regularise the services of the workmen concerned in the posts is valid and legal?

27. The Central Government in exercise of its powers under Section 10 of the Act referred the existing industrial dispute between the workmen concerned and the Corporation to the Tribunal which rightly adjudicated Point (i) of the dispute (supra) on the basis of the facts, circumstances and evidence on record and passed an award dated 26-5-1999 directing the Corporation that the services of the workmen concerned should be regularised with effect from the date on which all of them completed 480 days, subsequent to their appointment by the memorandum of appointment. The contention urged on behalf of the Corporation that the Tribunal has no power to pass such



an award compelling the Corporation to regularise the services of the workmen concerned is wholly untenable in law. Even if we consider the same, the said contention is contrary to the legal principles laid down by this Court in Hari Nandan Prasad v. Food Corpn. of India [Hari Nandan Prasad v. Food Corpn. of India, (2014) 7 SCC 190 : (2014) 2 SCC (L&S) 408] , wherein the decisions in U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh [U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh, (2007) 5 SCC 755 : (2007) 2 SCC (L&S) 258] and Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] and Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] were discussed in detail.

28. The relevant paragraphs are extracted hereunder: (Hari Nandan Prasad case [Hari Nandan Prasad v. Food Corpn. of India, (2014) 7 SCC 190: (2014) 2 SCC (L&S) 408], SCC pp. 207-08, 210-11 & 212, paras 25, 30 & 33)

25. "While accepting the submission of the appellant therein viz. U.P. Power Corpn., the Court gave the following reasons: (U.P. Power Corpn. case [U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh, (2007) 5 SCC 755 : (2007) 2 SCC (L&S) 258] , SCC pp. 758-59, paras 6-8)

'6. It is true as contended by the learned counsel for the respondent that the question as regards the effect of the industrial adjudicators' powers was not directly in issue in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . But the foundational logic in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is based on Article 14 of the Constitution of India. Though the industrial



adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularisation, the same cannot be viewed differently.

7. The plea of the learned counsel for the respondent that at the time the High Court decided the matter, decision in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was not rendered is really of no consequence. There cannot be a case of regularisation without there being employee-employer relationship. As noted above the concept of regularisation is clearly linked with Article 14 of the Constitution. However, if in a case the fact situation is covered by what is stated in para 45 of Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] the industrial adjudicator can modify the relief, but that does not dilute the observations made by this Court in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] about the regularisation.

8. On facts it is submitted by the learned counsel for the appellants that Respondent 2 himself admitted that he never worked as a pump operator, but was engaged as daily labourer on daily-wage basis. He also did not possess the requisite qualification. Looked at from any angle, the direction for regularisation, as given, could not have been given in view of what has been stated in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .



'It is clear from the above that the Court recognised the underlying message contained in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] to the effect that regularisation of a daily wager, who has not been appointed after undergoing the proper selection procedure, etc. is impermissible as it was violative of Article 14 of the Constitution of India and this principle predicated on Article 14 would apply to the Industrial Tribunal as well inasmuch as there cannot be any direction to regularise the services of a workman in violation of Article 14 of the Constitution. As we would explain hereinafter, this would mean that the Industrial Court would not issue a direction for regularising the services of a daily-wage worker in those cases where such regularisation would tantamount to infringing the provisions of Article 14 of the Constitution. But for that, it would not deter the Industrial Tribunals/Labour Courts from issuing such direction, which the industrial adjudicators otherwise possess, having regard to the provisions of the Industrial Disputes Act specifically conferring such powers. This is recognised by the Court even in the aforesaid judgment.

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30. Detailed reasons are given in support of the conclusion stating that the MRTU and PULP Act provides for and empowers the Industrial/Labour Courts to decide about the unfair labour practice committed/being committed by any person and to declare a particular practice to be unfair labour practice if it so found and also to direct such person to cease and desist from unfair labour practice. The provisions contained in Section 30 of the MRTU and PULP Act giving such a power to the Industrial and Labour Courts vis-à-vis the ratio of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] are explained by the



Court in the following terms: (Maharashtra SRTC case [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchhari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] , SCC pp. 573-74, paras 32-33 & 36)

32. *'The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing 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 employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.*

33. *The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . [Ed.: The matter between two asterisks have been emphasised in Maharashtra SRTC case, (2009) 8 SCC 556.] Unfair labour practice [Ed.: The matter between two asterisks have been emphasised in Maharashtra SRTC case, (2009) 8 SCC 556.] on the part of the employer in engaging employees 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 employees as provided in Item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

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36. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.'

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33. In this backdrop, the Court in Maharashtra SRTC case [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] was of the opinion that the direction of the Industrial Court to accord permanency to these employees against the posts which were available, was clearly permissible and within the powers, statutorily conferred upon the Industrial/Labour Courts under Section 30(1)(b) of the MRTU and PULP Act, 1971 which enables the industrial adjudicator to take affirmative action against



the erring employer and as those powers are of wide amplitude abrogating (sic including) within their fold a direction to accord permanency.”

(emphasis supplied)

29. *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 above said legal principle has been laid down succinctly by this Court in Bharat Bank Ltd. v. Employees [1950 SCC 470 : 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.”

30. 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 workmen concerned.”

29. In the instant petition, the petitioner bases his arguments on the ground that the workman does not possess the requisite qualifying experience i.e., 10 years of intensive practical experience in agriculture or horticulture including the qualification of possessing requisite degree of B.Sc. horticulture/agriculture and hence, the regularization cannot be *de-hors* the applicable rules.

30. A bare perusal of the aforesaid impugned award states that the workman before the learned Court below had claimed regularization only on the basis of his experience in the field of horticulture. The learned Court below took into account various documents including Ex. 1/2 to Ex 1/6 which makes it evident that the workman had been performing the duties of garden supervisor to the satisfaction of his superiors.

31. The petitioner University therein had contended that workman is not eligible for the said post and hence his services cannot be regularized. Whilst adjudicating upon the issue of regularization, the learned Tribunal opined that the workman was engaged as a daily wager in the horticulture department w.e.f 17th May, 1984 and it is not disputed that since then he has



been working in the same department except for a brief period when he was transferred to building department. The said transfer to the building department was quashed vide an award dated 1st November, 2002. It further opined that the workman did not possess the requisite qualification for the concerned post at the relevant time, i.e., his initial appointment. Further, as per the management of the University, the requisite qualification is either possession of B.Sc. Agriculture Horticulture or 10 years intensive practical experience in agriculture or horticulture.

32. In regard to the above observations made in the impugned award, it is clear that the learned Industrial Tribunal has taken into consideration all the evidence including the examination of witnesses and the documents placed on its record. The learned Tribunal particularly placed reliance on the judgments cited by the AR of the workman and reasoned that although the workman did not possess the requisite qualification of B.Sc. in Horticulture or 10 years of extensive experience in agriculture/horticulture, at the time of initial entry but with the passage of time he has acquired the latter. Hence, it held that it is not fair on the part of the employer, i.e., the petitioner University herein, to avoid its liability and deny giving what is legally due to the workman. Therefore, concluding that the workman is entitled to regularization on having acquired the requisite experience of 10 years while working from the year 1984 to 1994, the learned Tribunal passed the impugned award in favour of the workman.

33. Thus, it can be concluded from the above that the learned Industrial Tribunal has addressed each of the issues in detail and thus, concluded to its



effect that the benefit of regularization shall be extended to the workman as he has duly acquired the requisite experience of 10 years from 1984 to 1994.

34. This Court is of the considered view that, the learned Industrial Tribunal has dealt with the issues and has based its reasoning on each of the issues framed by it after having appraised the evidence placed on record and the cross examination. Thus, in view of the above stated judgments by the Hon'ble Supreme Court, this Court is of the view that the learned Industrial Tribunal, after having perused the evidence and witnessed the cross examination, has rightly arrived at the finding that the workman shall be regularized in service as he fulfills the requisite qualifying experience of 10 years from the year 1984 to 1994.

35. Under Article 226 of the Constitution of India, High Courts shall intervene with the award passed by a lower Court only in cases where there is a gross violation of the rights of a party. A mere irregularity which does not substantially affect the cause of a party shall not be a ground for the Court to intervene with the order passed by the Court below.

36. This Court is of the view that from a bare perusal of the award, it is crystal clear that the findings arrived at by the learned Industrial Tribunal are based on the evidence placed before it by the petitioner and the workman, and no such evidence has been placed before this Court to arrive at a different view, as it did in the impugned award.

37. Therefore, this Court concludes that the instant matter has been heard at length by the learned Court below and the petitioner had been granted



sufficient opportunities to justify as to why the respondent should not be regularized at the post of Garden Supervisor in the Horticulture Department. Thus, since no error on account of appraising evidence by the learned Court below is noted by this Court, the relief as prayed by the petitioner cannot be granted.

38. On a perusal of the findings of the learned Industrial Tribunal, this Court discerns no material to establish the propositions put forth by the petitioner. There is no material to characterize the impugned award passed by the learned Industrial Tribunal as perverse.

39. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned award dated 4th October, 2004, published on 24th May, 2005, passed by the Presiding Officer, Industrial Tribunal No. I, Karkardooma Courts, Delhi, in IA No. 259/96/89 and the same is hereby upheld.

40. Accordingly, this instant writ petition stands dismissed. Pending applications, if any, also stand dismissed.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 15, 2024
SV/RYP/DS

[Click here to check corrigendum, if any](#)