

28.07.2025
Item Nos.7-8
gd/ssd

FMA/1326/2024

UJJWAL MAJI
VS
THE CHAIRMAN DAMODAR VALLEY
CORPORATION (DVC) AND ORS.
IA NO: CAN/1/2025

with

WPA/16/2023
UJJAL MAJI
VS
THE CHAIRMAN DAMODAR VALLEY
CORPORATION (DVC) AND ORS.

Mr. Harishankar Chattopadhyay,
Mr. Chittaranjan Panda,
Ms. Shipra Santra
..for the Appellant.

Mr. Jayanta Samanta
..for the DVC.

1. With the consent finally heard.
2. In this intra court appeal the challenge is mounted to the original order of learned Single Judge dated 28.11.2023 passed in WPA 16 of 2023 whereby relief claimed by the appellant regarding regularization is turned down. The appellant then filed the application for recalling of the said order which was also dismissed on 12th July, 2024.
3. Aggrieved by both the orders, the present intra court appeal is filed.

4. The learned counsel for the appellant submits that the impugned order is pregnant with number of factual errors. For example, the appellant was treated as a casual/badly employee. It is mentioned that he has only worked for some days. He was engaged from time to time etc.

5. The learned counsel for the appellant further submits that as per the Constitution Bench judgment of Hon'ble Supreme Court in *Secretary, State of Karnataka and Others v. Uma Devi (III)* reported in (2006) 4 SCC 1, the appellant had right of consideration for regularization after rendering more than two decades services with the respondents.

6. The learned Single Judge has erred in recording that the appellant has a remedy under the Industrial Disputes Act, 1947 (I.D. Act) by placing heavy reliance on Section 2-A of I.D. Act.

7. The learned counsel for the appellant submits that for individual disputes, the workmen cannot raise a dispute before the adjudicatory forum unless such dispute is arising out of termination, removal or retrenchment.

8. The learned Single Judge placed reliance on the judgment of *Sunil Kumar Biswas v. Ordinance Factory Board* reported in (2019) 15 SCC 617.

9. However, in the said judgment, the Apex Court did not refer to Section 2-A of the Act and,

therefore, the said judgment issued without considering statutory provision is not binding and is *per incuriam* in nature.

10. It is submitted that the appellant/petitioner placed reliance on the judgment of Hon'ble Supreme Court which were mentioned in para 8 of the impugned order wherein it was held that individual workmen cannot raise dispute under the Industrial Disputes Act unless the same are covered under Section 2-A of I.D. Act.

11. The learned Single Judge has not assigned any reason whatsoever as to why the judgments cited by the appellant were not to be followed.

12. Pertinently, the learned Single Judge opined that in absence of policy, the question of issuing direction for regularization does not arise.

13. Oblivious of the fact that the appellant/petitioner has rendered 27 years of service and if employer has not framed any policy for regularization despite Constitution Bench Judgment in *Uma Devi (supra)*, the employer will not get any brownie points because of their inaction. Putting it differently it was argued that if such a contention is accepted, it will amount to permit the exploitation of employees by not framing the policy for regularization. Lastly, it is submitted that rejection of application for recalling is

bad in law and imposition of cost was totally uncalled for and unwarranted.

14. The learned counsel for the employer supported the impugned order and urged that the appropriate remedy for the appellant/petitioner is to approach the industrial forum under the Industrial Disputes Act where the appellant/petitioner can lead evidence and establish the disputed questions of fact. In addition, the curtains are drawn in the case of *Sunil Kumar Biswas (supra)* by Hon'ble Supreme Court. Thus, no fault can be found in the order of learned Single Judge.

15. No other points is raised by learned counsel for the parties.

16. We have heard the parties at length and perused the record.

17. A conjoint reading of paras 5 to 7 of the impugned order of learned Single Judge shows that the learned Single Judge took inspiration from the judgment of Hon'ble Supreme Court in *Sunil Kumar Biswas (supra)*.

18. We have carefully gone through the judgment of *Sunil Kumar Biswas* and are inclined to observe that in the said case the Apex Court had no occasion to consider the scope and ambit of Section 2-A of I.D. Act, 1947. Section 2-A of I.D. Act reads thus:

“[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-- ²[(1)]Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

³[(2)Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]”

19. A bare perusal of this provision which became part of the statute book with effect from 1.12.1965, it is clear like cloudless sky that only certain disputes can be deemed to be an industrial dispute. Those disputes are relating to discharge, dismissal and retrenchment of an individual workman.

20. In the instant case, admittedly the appellant's case was not falling within the four corners of dismissal, discharge or retrenchment. Instead, the appellant while remaining of employment is seeking regularization of services.

21. We find support in our view by a Madras High Court Judgment in the case of ***Industrial Relations Manager, Madura Coats, Ltd., Papavinasam Mills & Ors. vs. Jayaraman & Anr.*** reported in **2005 SCC OnLine Mad 97** wherein it was held:

“By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only S. 2(k) but also S. 2-A. Section 2-A, however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and, not other matters, which means that to give an example if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of S. 2-A. (However, if the union or body of workmen espouses his cause, it does become an industrial dispute). We have given only one instance; there may be many disputes which would not fall within S. 2(k) or S. 2-A. It is obvious that in all such cases, the remedy is only in a civil Court or by way of arbitration according to law, if the parties so choose. The machinery provided by the Industrial Disputes Act for resolution of disputes

(in short, Ss. 10 or 12) does not apply to such dispute).”

It has been held specifically in this case that if a workman is reduced in rank, pursuance to domestic enquiry that dispute raised by him does not become an industrial dispute within the meaning of S. 2-A, but it would become an industrial dispute, if the union or a body of workmen support the case of the individual workman.” (Emphasis Supplied)

22. Since Section 2-A of I.D. Act has not been considered in *Sunil Kumar Biswas*, we find substance in the argument of learned counsel for the appellant that said judgment cannot be relied upon to relegate the appellant to the forum under the I.D. Act because it does not fall within the ambit of Section 2-A of I.D. Act.

23. Interestingly, on one hand learned Single Judge opined that the remedy for the appellant/petitioner is to approach the forum under the I.D. Act, but in the ultimate paragraph, no such liberty was also reserved to the appellant/petitioner to avail the remedy and writ petition was simply dismissed.

24. It is noteworthy that in para 8 of impugned judgment learned Single Judge has referred to the judgment cited by the appellant/petitioner but did not assign a single reason as to why said judgments are not to be followed.

25. In view of aforesaid discussion, we are unable to hold that appellant/petitioner had a remedy

under the Industrial Disputes Act regarding his claim of regularization. The said claim needs to be considered by the writ court. If there exist a disputed question of fact, learned Single Judge may examine it and record appropriate findings in relation to such facts.

26. However, it is not proper to non-suit the appellant/petitioner for a remedy under the I.D. Act which is not available to the appellant/petitioner.

27. After the Constitution Bench judgment of Hon'ble Supreme Court in *Uma Devi*, the question of regularization was again considered in *Jaggo v. Union of India* reported in (2024) 12 SCR 1235.

28. Thus, it cannot be said that question of claim of regularization cannot be gone into and decided on merits by learned Single Judge.

29. In view of these discussions, the impugned order dated 28.11.2023 cannot sustain scrutiny and, accordingly, the same is set aside.

30. In view of setting aside the impugned order itself, the order dated 12th July, 2024 whereby the cost was imposed and recalling was declined is also set aside. WPA 16 of 2023 is restored to its original number for hearing.

31. The writ court is requested to consider and decide the writ petition on merits afresh.

32. It will be open for the parties to take all possible grounds during the course of hearing.

33. The writ appeals are disposed of without expressing any opinion on the merits of the case.

34. The appellant/petitioner may file an application for grant of stay before learned Single Judge (if he so advised).

(SUJOY PAUL, J)

(SMITA DAS DE, J.)