

(2015) 05 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 9873, 3389, 3404, 3804, 18376, 20972, 21468, 23773, 27226, 27240 of 2013, 3570, 3677, 11459, 11587, 11607, 11641, 11643, 11661 of 2014, 2747, 3171, 4057, 4309, 6552 and 7735 of 2015

Raj Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 4 SCT 277

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Manoj Chahal, for the Appellant

Final Decision : Allowed

Judgement

Ajay Tewari, J.—This order shall dispose of CWP Nos. 9873, 3389, 3404, 3804, 18376, 20972, 21468, 23773, 27226, 27240 of 2013, 3570, 3677, 11459, 11587, 11607, 11641, 11643, 11661 of 2014 and 2747, 3171, 4057, 4309, 6552, 7735 of 2015, as common questions of law and facts are involved therein.

2. The facts are that the petitioners were appointed upto three decades ago (all much prior to 2006). Their services having been terminated, they had all challenged the said termination before the Labour Court and in all these cases, no plea was taken that they were either backdoor appointees or that their engagement was otherwise illegal or that they had never been appointed against sanctioned regular posts. In all the cases, the Labour Court set aside their termination orders and granted them reinstatement with continuity of service. The quantum of back wages varied from case to case but the same is not relevant for the present controversy.

3. During the period when the cases of the petitioners were pending before the Industrial Adjudicator, other similarly situated persons (and as a matter of fact

persons junior to the present petitioners) were admittedly given the benefit of regularization. By these writ petitions, their simple claim is that under the orders of the Industrial Adjudicator they have been in service for periods up to 30 years and, therefore, are entitled to regularization.

4. In reply, support is being sought from para 53 of the decision of the Hon"ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , which is to the following effect:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub justice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularization or making permanent, those not duly appointed as per the constitutional scheme."

5. Counsel for the respondents has argued that as per the decision in Umadevi's case (supra), only an Industrial Adjudicator can pass an order of regularization and a High Court under Article 226 of the Constitution of India has no such power.

6. Responding thereto, counsel for the petitioners have placed reliance on the decision of the Hon"ble Supreme Court in Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another, AIR 2014 SC 1848 : (2014) AIRSCW 1383 : (2014) 3 JT 415 : (2014) 2 LLJ 54 : (2014) 2 SCALE 399 : (2014) 7 SCC 190 : (2014) 3 SCJ 451 : (2014) 2 SLJ 231 , and particularly para 34 thereof:-

"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 Article 14 of the Constitution. Further, such a direction would not be given when the 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 Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

7. Counsel for the respondents has sought to distinguish the aforesaid decision by arguing that in case the regularization had been ordered by the Industrial Adjudicator, it was only in that context that para 34 would come into operation. As per him, the decision in Hari Nandan Prasad's case (supra) nowhere mandates that any other authority except the Industrial Adjudicator can order regularization. Counsel for the respondents has further argued that this conclusion of their Lordships has further been strengthened by the decision of the Hon'ble Supreme Court in Durgapur Casual Workers Union Vs. Food Corporation of India, (2015) 144 FLR 597 : (2015) LabIC 771 : (2014) 10 SCJ 631 .

8. Counsel for the petitioners have, however, argued that in Durgapur Casual Workers Union's case (supra), it was the Industrial Tribunal which had ordered regularization and it was in that context that their Lordships had reiterated the ex-position of law made in para 53 of the decision in Umadevi's case (supra). However, they have relied upon the decision of Single Bench of this Court in Khajjan Singh and others v. State of Haryana and others, CWP No. 10017 of 2011, decided on 28.05.2014, wherein it was held as follows:-

"5. The cases in which the petitioners were relieved from service by reason of retrenchment or termination had to litigate before succeeding in securing Labour Court awards in their favour resulting in reinstatement with continuity of service retrospectively from the respective dates of their illegal retrenchment. They have been returned to the status of daily-wage employees.

6. It transpired that while they were litigating, many other daily-wage labourers who were engaged during their time or afterward but continued in service by reason of non-retrenchment, meanwhile became recipients of the benefit of policy circulars issued by the State of Haryana from time to time and their services have been regularized by the Government and they continue to serve as

regular employees deployed in the departments of the Government. The not so fortunate petitioners who spent time litigating for re-entry to service by reason of adverse orders passed against them are before this court claiming regularization from the respondent departments by virtue of awards granting them continuity of service with effect from the dates of their initial appointments/engagement as daily wage workers. These petitioners claim that they deserve to be treated similarly and on parity with their erstwhile colleagues junior to them from the dates of employment. This parity is sought with reference to the dates of engagement on daily-wage basis of those employed immediately thereafter who had had the benefit of their services regularized under different policy circulars of the Government including the one in operation when retrenchments were made.

9. To put it in a nutshell, all the daily wage labourers can be classified in two categories. The first fortunate category includes daily wage labourers who continued in service, were not retrenched and who were beneficiaries of policy circulars of the Government of Haryana which led to their services being regularized. The second not so fortunate category comprises of daily wage labourers who boarded the same boats but did not sail in them. This category of daily wagers comprises of retrenched labourers who invoked their remedies under the Act and secured reinstatement with continuity of service from the Industrial Tribunal. This did not end their suffering. The Government of Haryana by administrative orders declined to them the benefit of regularization under the umbrella protection of the Judgment in the case of Umadevi. Though this category of "have not" have continued in service consequent upon reinstatement but, the benefit of regularization has escaped them like the elusive Albatross. Hence, this section of unregularized daily wage labourers are before this Court to secure what their fortunate compatriots got without raising a whisker or shouting hoarse. That is how we are. (sic)....

64. 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 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 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 it 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.

9. Ultimately, the Single Judge allowed the plea. Against that, the respondents filed LPA No. 1903 of 2014, State of Haryana and others v. Jiyaji Sharma, wherein the Division Bench of this Court held as follows:-

"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 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 supplied).

10. Appeal was dismissed.

11. Counsel for the respondents has not been able to distinguish the facts of the present cases but has argued that there are some points which were neither raised before the learned Single Judge nor before the Division Bench but are now being raised in the present writ petitions.

12. In my opinion, once the Division Bench has decided the similar issue, it is not open for me to take a different view. Consequently, these writ petitions are allowed in the same terms as in CWP No. 10017 of 2011 (supra).