**SUPREME COURT OF INDIA**

Ajaypal Singh

Vs.

Haryana Warehousing Corporation

C.A.No.6327 of 2014

(Sudhansu Jyoti Mukhopadhaya and Sharad Arvind Bobde JJ.)

09.07.2014

**JUDGMENT**

1. Leave granted. This appeal has been preferred by the Appellant against the order dated 16th February, 2010 passed by the High Court of Punjab and Haryana at Chandigarh in L.P.A. No. 1117 of 2009 (O & M). By the impugned order, the Division Bench upheld the judgment passed by the learned Single Judge with following observation:

> "...several judgments have been delivered by the Hon'ble Supreme Court, holding that reinstatement of a workman to a public post could not be allowed if the workman has not been recruited after following the mandatory requirement of Articles 14and 16 of the Constitution. The said judgment of learned Single, given in the year 1996, which is in conflict with above judgments of the Hon'ble Supreme Court, cannot be followed."

2. The factual matrix of the case is as follows:

> "The Appellant was a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 with the Respondent-Haryana Warehousing Corporation (hereinafter referred to as the "Corporation"), which is an 'Industry' within, the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The Appellant had completed more than 240 days of service in the preceding calendar year but his services were terminated with effect from 1st July, 1988 without one month's prior notice or pay in terms of Section 25F of the Industrial Disputes Act, 1947."

3. On a reference, learned Presiding Officer, Labour Court, Rohtak by the Award dated 11th August, 1993 in Reference No. 480/89 held that the termination of services of the Appellant-workman was not justified and he is liable to be reinstated with full back wages. The said order was challenged by the Corporation before the High Court in Writ Petition (C) No. 15094 of 1993. Learned Single Judge of the High Court of Punjab and Haryana at Chandigarh by the order dated 26th March, 2009 held that the appointment of the workman was made in violation of Articles 14 and 16 of the Constitution of India and, therefore, the workman is not entitled to reinstatement, but allowed compensation of ` 20,000/- in favour of the workman. The aforesaid order was affirmed by the Division Bench of the High Court by the impugned judgment.

4. Learned Counsel for the Appellant submits that the Industrial Disputes Act, 1947 is a beneficial legislation. The 'employer' of an industry cannot escape from the mandatory provisions of Sections 25F and 25H of the Industrial Disputes Act, 1947 on a non-est ground that the initial appointment was illegal. On the other hand, according to the Respondent those who got appointed through back door means are not entitled for reinstatement.

5. The Industrial Disputes Act, 1947 is a beneficial legislation enacted with an object for settlement of industrial disputes and for a certain other purpose. Section 2(ka) of the said Act defines industrial establishment or undertaking.

6. In the matter of appointment in the services of the 'State', including a public establishment or undertaking, Articles 14 and 16 of the Constitution of India are attracted. However, Articles 14 and 16 of the Constitution of India are not attracted in the matter of appointment in a private establishment or undertaking.

7. The issue that is to be determined herein is whether the validity of initial appointment of a workman can be questioned in a case in which Court/Tribunal has to determine whether the termination of service of the workman which comes within the meaning of "retrenchment", is violative of Section 25F of the Industrial Disputes Act.

8. Section 2(oo) defines 'Retrenchment' which is as follows:

"Section 2(oo) "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its. expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;"

9. The aforesaid Section 2(oo) makes it clear that except the cases covered under Clauses (a), (b), (bb) and (c) the termination of service of a workman by the employer for any reason whatsoever comes within the meaning of 'retrenchment'.

10. Chapter V A of the Industrial Disputes Act, 1947 deals with 'lay-off and retrenchment'. Section 25B defines continuous service, including deemed continuous service on continuation of certain days in a year. Section 25C of the Act explains the right of the workman for compensation. Section 25F deals with conditions precedent to retrenchment of a workman, which reads as follows:

"25F. Conditions precedent to retrenchment of workmen.--No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

11. The aforesaid provisions make it mandatory that in order to retrench a workman who has been in continuous service for not less than one year in industry, the employer needs to give a month's notice or to pay the workman the amount in lieu of notice and the wages for the period of notice. That is to say any order of retrenchment in violation of Section 25F will render such order illegal.

Section 25G deals with the procedure for retrenchment and the said Section reads as follows:

"Section 25G. Procedure for retrenchment.--Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

12. For attracting the provisions of Section 25G of the Industrial Disputes Act, 1947, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason (refer: Harjinder Singh v. Punjab State Warehousing Corporation MANU/SC/0060/2010 : (2010) 3 SCC 192).

13. Section 25H is couched in wide language and is capable of application to all 'retrenched workmen' and not merely those covered Under Section 25F of the Act

(refer: Central Bank of India v. S. Satyam MANU/SC/0638/1996 : 1996 (5) SCC 419).

14. Section 25H reads as follows:

> "Section 25H. Re-employment of retrenched workmen.--Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman who offer themselves for reemployment shall have preference over other persons."

15. In case if an employer proposes to employ any person, it is mandatory on the part of the employer to give an opportunity to the retrenched workmen who offer themselves to re-employment and such workmen who offer themselves for re-employment shall have preference over other persons. The provision of Section 25H is in conformity with Articles 14 and 16 of the Constitution of India.

16. This Court in the case of M.P. Administration v. Tribhuban MANU/SC/1950/2007 : (2007) 9 SCC 748 while taking into account the doctrine of public employment involving public money and several other facts observed as follows:

> "6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the Respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an

industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi MANU/SC/1918/2006 : (2006) 4 SCC 1 and other relevant factors pointed out by the Court in)a catena of decisions shall not be taken into consideration.

7. The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors. (See M.P. Housing Board v. Manoj Shrivastava MANU/SC/8059/2006 : (2006)2 SCC 702, State of M.P. v. Arjunlal Rajak MANU/SC/8061/2006 : (2006)2 SCC 711 and M.P. State Agro Industries Development Corpn. Ltd. v. S.C. Pandey MANU/SC/1037/2006 : 2006 (2) SCC 716.)"

17. The effect of Constitution Bench decision in State of Karnataka v. Umadevi, MANU/SC/1918/2006 : (2006) 4 SCC 1, in case of unfair labour practice was considered by this Court in Maharashtra State Road Transport and Another v. Casteribe Rajya Parivahan Karmchari Sanghatana MANU/SC/1554/2009 : (2009) 8 SCC 556. In the said case, this Court held that Umadevi's case has not over ridden powers of Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of employer is established. This Court observed and held as follows:

"34. It is true that Dharwad Distt. P.W.D. Literate Daily Wages Employees' Assn. v. State of Karnataka MANU/SC/0164/1990 : (1990) 2 SCC 396 arising out of industrial adjudication has been considered in State of Karnataka v. Umadevi MANU/SC/1918/2006 : (2006) 4 SCC 1 and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in Umadevi MANU/SC/1918/2006 : (2006) 4 SCC 1 leaves no manner of doubt that what this Court was concerned in Umadevi MANU/SC/1918/2006 : (2006) 4 SCC 1 was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual,

temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed.

35. Umadevi MANU/SC/1918/2006 : (2006) 4 SCC 1 is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi MANU/SC/1918/2006 : (2006) 4 SCC 1 does not denude the Industrial and Labour Courts f their statutory power Under Section 30 read with Section 32 of the M.R.T.U. and P.U.L.P. 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 MANU/SC/1918/2006 : (2006) 4 SCC 1 cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order Under Section 30 of the M.R.T.U. and P.U.L.P. Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

"47. It was strenuously urged by the learned Senior Counsel for the Corporation that the Industrial Court having found that the Corporation indulged in unfair labour practice in employing the complainants as casuals on piece-rate basis, the only direction that could have been given to the Corporation was to cease and desist from indulging in such unfair labour practice and no direction of according permanency to these employees could have been given. We are afraid, the argument ignores and overlooks the specific power given to the Industrial/Labour Court Under Section 30(1)(b) to take affirmative action against the erring employer which as noticed above is of wide amplitude and comprehends within its fold a direction to the employer to accord permanency to the employees affected by such unfair labour practice."

18. In Umadevi's case this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India.

19. The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.

20. We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees.

21. Section 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under said provision if the employer retrenches workman. Such a workman cannot be retrenched until he/she is given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice apart from compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

> If any part of the provisions of Section 25F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot

justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 and 16 of the Constitution of India.

22. Section 25H of the Industrial Disputes Act relates to re-employment of retrenched workmen. Retrenched workmen shall be given preference over other persons if the employee proposes to employ any person.

23. We have held that provisions of Section 25H are in conformity with the Articles 14 and 16 of the Constitution of India, though the aforesaid provisions (Articles 14 and 16) are not attracted in the matter of reemployment of retrenched workmen in a private industrial establishment and undertakings. Without giving any specific reason to that effect at the time of retrenchment, it is not open to the employer of a public industrial establishment and undertaking to take a plea that initial appointment of such workman was made in violation of Articles 14 and 16 of the Constitution of India or the workman was a backdoor appointee.

24. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Articles 14 and 16 of the Constitution of India or in accordance with rules. Even for retrenchment on such ground, unfair labour practice cannot be resorted and thereby workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Section 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year.

25. However, in other cases, when no such plea is taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of the Constitution of India or in violation of any statutory rule or his appointment was a backdoor appointment, while granting relief, the employer cannot take a plea that initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by the appropriate Government for determination of question whether the initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India or statutory rules. Only if such reference is made, a workman is required to lead evidence to prove that he was appointed by following procedure prescribed under the Rules and his initial appointment was legal.

26. In the present case, the services of Appellant was not terminated on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. No such reasons was shown in the order of retrenchment nor was such plea raised while reference was made by appropriate Government for adjudication of the dispute between the employee and the employer. In absence of such ground, we are of the opinion that it was not open for the High Court to deny the benefit for which the Appellant was entitled on the ground that his initial appointment was made in violation of Articles 14 and 16 of the Constitution of India. For the reasons aforesaid, we set aside the judgment and order dated 16th February, 2010 passed by the High Court of Punjab and Haryana, Chandigarh in L.P.A. No. 1117 of 2009 (O & M); judgment and order dated 26th March, 2009 passed by the learned Single Judge of the High Court of Punjab and Haryana, Chandigarh and upheld the Award dated 11th August, 1993 passed by the learned Presiding Officer, Labour Court, Rohtak in Reference No. 480/89. The Respondent is directed to implement the Award passed by the learned Presiding Officer, Labour Court, Rohtak in Reference No. 480/89 within three months, if not yet implemented. The appeal is allowed with aforesaid observations and directions.