Hari Nandan Prasad & Anr vs Employer I/R To Mangmt.Of F.C.I. & Anr on 17 February, 2014

Equivalent citations: AIR 2014 SUPREME COURT 1848, 2014 (7) SCC 190, 2014 AIR SCW 1383, 2014 LAB. I. C. 1374, 2014 (2) AJR 5, (2015) 1 MAH LJ 209, 2014 (1) CURLR 919, (2014) 2 SERVLJ 231, (2014) 3 KCCR 267, (2014) 3 RAJ LW 2425, (2014) 2 LAB LN 564, 2014 (2) SCALE 399, 2014 (2) SCT 234, 2014 (1) KER LT 81 SN, (2014) 141 FACLR 74, (2014) 3 SERVLR 262, (2014) 2 SCALE 399

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Bench: K.S. Radhakrishnan, A.K. Sikri

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.2417-2418 /2014
(arising out of S.L.P.(Civil) Nos. 29634-29635/2008)

Hari Nandan Prasad & Anr. …Appellants

Vs.

Employer I/R to Mangmt.of FCI & Anr. …Respondents

J U D G M E N T

A.K.SIKRI,J.

1. Leave granted.

2. The two appellants have filed one combined Special Leave Petition, which arises out of a common judgment dated 27.6.2008 passed by the Division Bench of the Jharkhand High Court in two LPAs which had been filed by the respondent herein viz. Food Corporation of India (FCI). The two appellants were working on casual basis with the FCI. After certain time, their services were dispensed with. Both of them raised industrial dispute alleging wrongful termination which was referred to the Central Government- cum- Industrial Tribunal (CGIT). These proceedings

culminated in two awards dated 12.12.1996 and 18.12.1996 respectively passed by the CGIT. In both these awards, termination of both the appellants was held to be illegal and they were directed to be reinstated with 50% back wages. The CGIT also ordered their regularization in service. FCI filed Writ Petitions in both the cases challenging these awards which were initially admitted sometime in the year 1988 and the operation of the awards was stayed. However, orders were passed under Section 17-B of the Industrial Disputes Act (ID Act) directing payment of full wages as last wages drawn to the appellants from the date of the award in each case. These Writ Petitions were ultimately dismissed by the learned Single Judge vide common judgment and order dated 19.5.2005. As pointed out above, this judgment of the learned Single Judge was challenged by the FCI by filing LPAs. These LPAs have been allowed by the Division Bench, thereby setting aside the orders of the learned Single Judge as well as awards passed by the CGIT. This is how two appellants are before us in this appeal.

3. Before we proceed further, we deem it appropriate to give the details of nature of employment of each of the appellants with the FCI and tenure etc. as well as the gist of the tribunal's awards.

Hari Nandan.

4. He was engaged on daily wages basis as Labourer-cum-Workman, in the exigency of the situation, at Food Storage Depot, Jasidih by the Depot In- charge, FCI, Jasidih on 1st June 1980. On the ground that services of appellant No.1 were no more required, he was disengaged w.e.f. 1.3.1983. While doing so, no notice or notice pay or retrenchment compensation was given to him. Appellant No.1 raised industrial dispute which was referred to the CGIT by the Central Government vide reference order dated 1.10.1992, with the following terms of reference:

> "Whether the action of the management of Food Corporation of India, in retrenching Shri Hari Nandan Prasad, Ex-Casual Workman, in contravention of Section 25-F of the I.D.Act, 1947 and denying reinstatement with full back wages and regularization of his service is legal and justified? If not to what relief the concerned workman is entitled to?"

5. The CGIT gave its award dated 12.12.1996 holding that the termination was in contravention of Section 25-F of the Industrial Disputes Act. The CGIT also, while ordering reinstatement of appellant No.1, held that he was also entitled to regularization of his services from the date of his stoppage from service dated 1.3.1983. Back wages to the extent of 50% were awarded. As far as direction for regularization is concerned, it was based on Circular issued by the FCI whereby any temporary worker employed for more than 90 days was entitled for regularization of his service. It was noted that as per the said Circular the Management had regularized the services of 70-75 similarly situated casual workers and therefore denying the same benefit to appellant No.1 amounted to discrimination.

Gobind Kumar Choudhary.

6. Appellant No.2 was engaged on daily wages as casual Typist at the District Office, FCI, Darbhanga against a vacancy of Class-III post on 5.9.1986. He worked in the capacity till 15.9.1990 when his name was struck off the rolls. He also raised industrial dispute which was referred to CGIT with following terms of reference:

> "Whether the action of the Management of Food Corporation of India, Laaherisarai, Darbhanga is legal and justified in retrenching Shri Govind Kumar Chaudhary, who was working as Casual Typist, arbitrarily and in violation of Section 25-F of the I.D.Act, and denying reinstatement with full back wages and regularization of service is legal and justified? If not to what relief the concerned workman is entitled to?" In his case, the award dated 18.12.1996 was made by the CGIT on almost identical premise, as in the case of appellant No.1, supported by similar reasons.

7. The learned Single Judge while dismissing both the Writ Petitions filed by the FCI concurred with the findings and reasons given by the CGIT.

8. In the LPAs before the Division Bench, the primary contention of the FCI was that there could not have been any direction of regularization of services even on the admitted case of both the workmen, viz. merely on the ground that they had worked for more than 240 days in a calendar year as casual employees. It was also submitted that though the District Manager of the FCI was authorized to employ persons as temporary workers, such an authority was given for employing them for 7 days only and no more, and in case of violation of this strict stipulation contained in the Circular issued by the FCI, the concerned officer could be proceeded against departmentally. It was further argued that even if such temporary employment was to continue beyond stipulated period of 7 days, since these two workmen had worked on daily wages basis, that too for a period of 3 years or so, there could not have been any regularization of these workmen in view of the judgments of this Court in the case of Delhi Development Horticulture Employees Union vs. Delhi Administration AIR 1992 SC 789 and Constitution Bench judgment in the case of Secretary, State of Karnataka vs. Uma Devi & Ors. (2006) 4 SCC 1. These contentions have impressed the Division Bench of the High Court, and accepted by it, giving the following reasons:

> "The Tribunal has apparently misconceived the principles of law laid down in this context. In the case of Delhi Development Horticulture Employees Union vs. Delhi Administration (AIR 1992) SC 789) the Supreme Court has categorically laid down that temporary employees, even if they have worked for more than 240 days, cannot claim any right or benefit for automatic regularization of their services. Similar view has been taken in the case of Post Master General, Kolkata & Ors vs. Tutu Das (Dutta), reported in 2007 (5) SCC 317. More so, where no posts are created or no vacancies to sanctioned posts exists, only on the ground of working for more than 240 days, regularization cannot be directed. Even in cases where there are regular posts and vacancies, the procedure laid down for appointment has to be followed."

9. In so far as contention of the appellant predicated on Circular dated

6.5.1997 is concerned, on the basis of which they claimed that 70-75 persons had been regularized and discriminatory treatment could not be meted to them, this contention has been brushed aside by the High Court in the impugned judgment in the following manner:

> "The, contention of Mrs.Pal that there has been discrimination as several persons were regularized on the basis of the Circular of the Management dated 6.5.1987, cannot be accepted. Reliance for this purpose on the case of U.P. State Electricity Board vs. Pooran Chandra Pandey reported in (2007) 11 SCC 92, is also of no help to her. Firstly, there were several conditions and criteria in the said Circular for regularization, but there is no finding that the respondents workmen in these appeals fulfilled such criteria. Secondly, in the case of U.P.State Electricity Board matter (supra) the employees of the Co-operative Society who were taken over by the Electricity Board claimed that the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees working from before 4.5.1990, will also apply to them as they were also appointed prior to 4.5.1990 in the Society. It was held that since the taken over employees were appointed in the Society before 4.5.1990, they could not be denied the benefit of the said decision of the Electricity Board. There is nothing to show that the appointment of the taken over employees was made by the Society without following the procedure in that behalf, whereas in the present case, the respondents workmen were not appointed against vacant and sanctioned posts after following the procedure of appointment.

Furthermore, in paragraph 6 of the judgment of the Constitution Bench in the case of Secretary, State of Karnataka vs. Uma Devi (2006) 4 SCC 1, it was held that no Government order, notification or circular can be substituted for the statutory rules framed under the authority of law. In para 16 of the judgment in the case of R.S.Garg vs. State of U.P. (2006 (6) SCC 430), it has been held that even the Government cannot make rules or issue any executive instructions by way of regularization. Similar view has been taken in the case of the Post Master General (supra). Therefore, the respondent workmen cannot claim regularization on the basis of the said Circular of the Management dated 6.5.1987, nor the said judgment of the U.P. Electricity Board (supra) is of any help to them."

10. Heavily relying upon the judgment in the case of Uma Devi (supra), the High Court has held that as both the appellants did not render 10 or more years of service, their cases do not come even in the exception carved out by the Constitution Bench in Uma Devi's case.

11. Another contention raised by the appellants before the High Court was that the ratio of Uma Devi's case had no relevance in the cases of industrial adjudication by the Labour Courts/Industrial Tribunals. However, even this submission was found to be meritless by the High Court taking support of the judgment of this Court in U.P. Power Corporation Vs. Bijli Mazdoor Sangh & Ors. (2007) 5 SCC 755.

12. We may record here that the Division Bench accepted that there was infraction of Section 25-F of the I.D.Act in both the cases. However, they were held not entitled to reinstatement because of the reason that they were employed strictly as temporary workers, without any stipulation or promise that they would be made permanent and therefore reinstatement of such workers was not warranted and they were entitled to get monetary compensation only. As far as compensation is concerned, since both the appellants were paid the money equivalent to wages last drawn, for number of years when the Writ Petitions were pending, under Section 17 -B of the I.D. Act, the High Court felt that the appellants were duly compensated and no further amount was payable.

13. Challenging the validity of the approach of the High Court, the learned counsel for the appellants submitted that the entire thrust of the judgment of the High Court rests on the decision of this Court in Uma Devi's case which was impermissible as the said judgment is clarified by this Court subsequently in the case of Maharashtra State Road Transport Corporation & Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 8 SCC 556, wherein it is held, in categorical terms, that in so far as Industrial and Labour Courts are concerned, they enjoy wide powers under Section 30(1)(b) of the Industrial Disputes Act to take affirmative action in case of unfair labour practice and these powers include power to order regularization/permanency. The Court has, further, clarified that decision in Uma Devi limits the scope of powers of Supreme Court under Article 32 and High Courts under Article 226 of the Constitution to issue directions for regularization in the matter of public employment, but power to take affirmative action under section 30(1)(b) of the I.D.Act which rests with the Industrial/Labour Courts, remains intact. It was, thus, argued that entire edifice of the impugned judgment of the High Court erected on the foundation of Uma Devi (supra) crumbles.

14. The learned counsel for the FCI, on the other hand, referred to the judgment in U.P. Power Corporation (supra) wherein this Court has taken unambiguous view that the law laid down in Uma Devi is applicable to Industrial Tribunals/Labour Courts as well. It was submitted that the judgment in U.P. Power Corporation (supra) was not taken note of in the subsequent judgment in Maharashtra State Road Transport Corporation (supra) and this Court should follow the earlier judgment rendered in U.P.Power Corporation's case. The learned counsel also relied upon the recent judgment of this Court in the case of Assistant Engineer, Rajasthan Development Corporation & Anr. vs. Gitam Singh (2013) 5 SCC 136 to contend that even when there is a wrongful termination of services of a daily wager because of non-compliance of the provisions of Section 25-F of the I.D.Act, such an employee is not entitled to reinstatement but only monetary compensation. On the aforesaid basis, the learned counsel pleaded for dismissal of the appeal.

15. We have given considerable thoughts to the submissions made by the learned counsel for the parties on either side. It is clear from the aforesaid narratives that this case has two facets, which are reflected even in the terms of references as well on which the disputes were referred to the CGIT. First refers to the validity of the termination and the other one pertains to the regularization. Twin issues, which have, thus, to be gone into, are: (1) whether termination of service of the appellants was illegal?

Related issue here would be that if it is illegal, then whether in the facts and circumstances of this case, the appellants would be entitled to reinstatement in service or monetary compensation in lieu

of reinstatement would be justified?

(2) whether the appellants are entitled to regularization of their services?

We would also record that both the issues, in the facts of this case, are somewhat overlapping which would become apparent, with the progression of our discussion on these issues.

Reg.: Validity of termination.

16. This issue hardly poses any problem. Admitted facts are that both the appellant had worked for more than 240 days continuously preceding their disengagement/termination. At the time of their disengagement, even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, mandatory pre-condition of retrenchment in paying the aforesaid dues in accordance with Section 25-F of the I.D. Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well. With this, we advert to the issue of relief which should be granted in such cases, as that was the topic of hot debate before us as well.

17. Admittedly, both the workmen were engaged on daily wages basis. Their engagement was also in exigency of situation. In so far as appellant No.1 is concerned, he was disengaged way back in the year 1983. The dispute in his case was referred for adjudication to CGIT in 1992 only. There is a time lag of 9 years. Though no reasons are appearing on record for such an abnormal delay, it seems that he had raised the industrial dispute few years after his disengagement which can be inferred from the reading of the award of the CGIT as that reveals that after his disengagement he kept on making representations only and he took recourse to judicial proceedings only after Circular dated 6.5.1997 was issued as per which the FCI had decided to regularize the services of all casual workmen who had completed more than 90 days before 1996. Be that as it may, at this juncture what we are highlighting is that appellant No.1 had worked on daily wages basis for barely 3 years and he is out of service for last 30 years. Even when the Tribunal rendered his award in 1996, 13 years had elapsed since his termination. On these facts, it would be difficult to give the relief of reinstatement to the persons who were engaged as daily wagers and whose services were terminated in a distant past. And, further where termination is held to be illegal only on a technical ground of not adhering to the provisions of Section 25-F of the Act. Law on this aspect, as developed over a period of time by series of judgments makes the aforesaid legal position very eloquent. It is not necessary to traverse through all these judgments. Our purpose would be served by referring to a recent judgment rendered by this very Bench in the case of BSNL vs. Bhurumal 2013 (15) SCALE 131 which has taken note of the earlier case law relevant to the issue. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement:

> “The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL vs. Man Singh (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that

> relief of reinstatement be also given as a matter of right. In the case of Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126, it was held that those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion.
>
> Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.
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> In Jagbir Singh vs. Haryana State Agriculture Mktd. Board (2009) 15 SCC 327 delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, U.P.State Brassware Corpn. Ltd. Vs. Uday Narain Pandey (2006) 1 SCC 479, Uttaranchal Forest Department Corpn. Vs. M.C.Joshi (2007) 9 SCC 353, State of M.P. vs. Lalit Kumar Verma (2007) 1 SCC 575, M.P.Admn. vs. Tribhuban (2007) 9 SCC 748, Sita Ram vs. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, Jaipur Development Authority vs. Ramsahai (2006) 11 SCC 684, GDA vs. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak vs. Nagar Panchayat, Gajraula (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14).

It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

Jagbir Singh has been applied very recently in Telegraph Deptt. Vs. Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated:

(SCC p.777, para 11) In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.

Taking note of the judgments referred to in the aforesaid paragraphs and also few more cases in other portion of the said judgment, the legal position was summed up in the following manner:

"It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him wee regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases,

reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied".

18. We make it clear that reference to Uma Devi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, appellant No.1 would not be entitled to reinstatement. This could be the position in respect of appellant No.2 as well. Though the factual matrix in his case is slightly different, that by itself would not have made much of a difference. However, the matter does not end here. In the present case, the reference of dispute to the CGIT was not limited to the validity of termination. The terms of reference also contained the claim made by the appellants for their regularization of service.

19. We have already pointed out that the two aspects viz. that of reinstatement and regularization are intermixed and overlapping in the present case. If the appellants were entitled to get their services regularized, in that case it would have been axiomatic to grant the relief of reinstatement as a natural corollary. Therefore, it becomes necessary, at this stage, to examine as to whether the order of CGIT, as affirmed by the learned Single Judge of the High Court directing regularization of their service, was justified or the approach of the Division Bench of the High Court in denying that relief is correct.

Re: Relief of Regularization

20. Before we advert to this question, it would be necessary to examine as to whether the Constitution Bench judgment in Uma Devi case have applicability in the matters concerning industrial adjudication. We have already pointed out above the contention of the counsel for the appellants in this behalf, relying upon Maharashtra State Road Transport case that the decision in Uma Devi would be binding the Industrial or Labour Courts. On the other hand, counsel for the FCI has referred to the judgment in U.P.Power Corporation for the submission that law laid down in Uma Devi equally applies to Industrial Tribunals/Labour Courts. It, thus, becomes imperative to examine the aforesaid two judgments at this juncture.

21. A perusal of the judgment in U.P. Power Corporation would demonstrate that quite a few disputes were raised and referred to the industrial tribunal qua the alleged termination of respondent Nos.2 and 3 in that case. Without giving the details of those cases, it would be sufficient to mention that in one of the cases the tribunal held that after three years of their joining in service both respondents 2 and 3 were deemed to have been regularized. The appellants filed the Writ Petition which was also dismissed. Challenging the order of the High Court, the appellants had approached this Court. It was argued that there could not have been any regularization order passed by the Industrial Court in view of the decision in Uma Devi. Counsel for the workmen had taken a specific plea that the powers of the industrial adjudicator were not under consideration in Uma Devi's case and that there was a difference between a claim raised in a civil suit or a Writ Petition on the one hand and one adjudicated by the industrial adjudicator. It was also argued that the labour court can create terms existing in the contract to maintain industrial peace and therefore it had the power to vary the terms of the contract. While accepting the submission of the appellant therein viz.

U.P. Power Corporation, the Court gave the following reasons:

> "It is true as contended by learned counsel for the respondent that the question as regards the effect of the industrial adjudicators' powers was not directly in issue in Umadevi case. But the foundation logic in Umadevi case is based on Article 14 of the Constitution of India. Though the industrial adjudicator can very 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 regularization, the same cannot be viewed differently.
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> The plea of learned counsel for the respondent that at the time the High Court decided the matter, decision in Umadevi case was not rendered is really of no consequence. There cannot be a case of regularization without there being employee-employer relationship. As noted above the concept of regularization 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 case the industrial adjudicator can modify the relief, but that does not dilute the observations made by this Court in Umadevi case about the regularization.
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> On facts, it is submitted by learned counsel for the appellants that Respondent No.2 himself admitted that he never worked as a pump operator, but was engaged as daily wage basis. He also did not possess the requisite qualification. Looked at from any angle, the direction for regularization, as given, could not have been given in view of what has been stated in Umadevi case."

22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.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 Industrial Disputes Act specifically conferring such powers. This is recognized by the Court even in the aforesaid judgment.

23. For detailed discussion on this aspect, we proceed to discuss the ratio in the case of Maharashtra State Road Transport Corporation (supra). In that case the respondent Karamchari Union had filed two complaints before the Industrial Court, Bombay alleging that the appellant-Corporation had indulged in unfair labour practice qua certain employees who were engaged by the appellant as casual labourers for cleaning the buses between the years 1980-1985. It was stated in the complaints that these employees were made to work every day at least for 8 hours at the depot concerned of the

Corporation; the work done by them was of permanent nature but they were being paid a paltry amount; and even when the post of sweepers/cleaners were available in the Corporation, these employees had been kept on casual and temporary basis for years together denying them the benefit of permanency. After adjudication, the Industrial Court held that the Corporation had committed unfair labour practice under items 5 and 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (MRTU and PULP Act). As a consequence, it directed the Corporation to pay equal wages to the employees concerned which was being paid to Swachhaks and also pay arrears of wages to them. In the second complaint, the Industrial Court returned the finding that the Corporation was indulging in unfair labour practice under Item 6 of Schedule IV, by continuing these employees on temporary/casual/daily wage basis for years together and thereby depriving them the benefits of permanency. The direction in this complaint was to cease and desist from the unfair labour practice by giving them the status, wages and all other benefits of permanency applicable to the post of cleaners, w.e.f. 3.8.1982. The Corporation challenged these two orders of the Industrial Court before the High Court of Judicature at Bombay in five separate Writ Petitions. These were disposed of by the learned Single Judge vide common judgment dated 2.8.2001 holding that complaints were maintainable and the finding of the Industrial Court that the Corporation had indulged in unfair labour practice was also correct. The Corporation challenged the decision of the learned Single Judge by filing LPAs which were dismissed by the Division Bench on 6.5.2005. This is how the matter came before the Supreme Court. One of the contentions raised by the appellants before this Court was that there could not have been a direction by the Industrial Court to give these employees status, wages and other benefits of permanency applicable to the post of cleaners as this direction was contrary to the ratio laid down by the Constitution Bench of this Court in Umadevi (supra). The Court while considering this argument went into the scheme of the MRTU and PULP Act. It was, inter-alia, noticed that complaints relating to unfair labour practice could be filed before the Industrial Court. The Court noted that Section 28 of that Act provides for the procedure for dealing with such complaints and Section 30 enumerates the powers given to the Industrial and Labour Courts to decide the matters before it including those relating to unfair labour practice. On the reading of this section, the Court held that it gives specific power to the Industrial/Labour Courts to declare that an unfair labour practice has been engaged and to direct those persons not only to cease and desist from such unfair labour practice but also to take affirmative action. Section 30(1) conferring such powers is reproduced below:

> "30. Powers of Industrial and Labour Courts.- (1)Where a court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order-
>
> (a)declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;
>
> (b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the

> employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;
>
> (c) where a recognized union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section(1) of Section 20 or its right under Section 23 shall be suspended."

24. It was further noticed that Section 32 of the Act provides that the Court shall have the power to decide all connected matters arising out of any application or a complaint referred to it for decision under any of the provisions of this Act. The Court then extensively quoted from the judgment in Uma Devi in order to demonstrate the exact ratio laid down in the said judgment and thereafter proceeded to formulate the following question and answer thereto:

> "The question that arises for consideration is: have the provisions of the MRTU and PULP Act been denuded of the statutory status by the Constitution Bench decision in Umadevi? In our judgment, it is not."

25. 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 ceased and desist from unfair labour practice. The provisions contained in Section 30 giving such a power to the Industrial and Labour Courts vis-à-vis the ratio of Uma Devi are explained by the Court in the following terms:

> "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.
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> 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. 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. Unfair labour practice 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.

> Umadevi 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 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 PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

26. The Court also accepted the legal proposition that Courts cannot direct creation of posts, as held in Mahatma Phule Agricultural University vs. Nasik Zilla Sheth Kamgar Union (2001) 7 SCC 346. Referring to this judgment, the Court made it clear that inaction on the part of the State Government to create posts would not mean an unfair labour practice had been committed by the employer (University in that case) and as there were no posts, the direction of the High Court to accord the status of permanency was set aside. The Court also noticed that this legal position had been affirmed in State of Maharashtra vs. R.S.Bhonde (2005) 6 SCC 751. The Court also reiterated that creation and abolition of post and regularization are purely Executive functions, as held in number of judgments and it was not for the Court to arrogate the power of the Executive or the Legislature by directing creation of post and absorbing the workers or continue them in service or pay salary of regular employees. This legal position is summed up in para 41 which reads as under:

> "Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts."

27. However, the Court found that factual position was different in the case before it. Here the post of cleaners in the establishment were in existence. Further, there was a finding of fact recorded that the Corporation had indulged in unfair labour practice by engaging these workers on temporary/causal/daily wage basis and paying them paltry amount even when they were discharging duties of eight hours a day and performing the same duties as that of regular employees.

28. In this backdrop, the Court was of the opinion that direction of the Industrial Court to accord permanency to these employees against the posts which were available, was clearly permissible and with the powers, statutorily conferred upon the Industrial/Labour Courts under Section 30 (1)(b) of the said Act which enables the Industrial adjudicator to take affirmative action against the erring employees and as those powers are of wide amplitude abrogating within its fold a direction to accord permanency.

29. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Art.14 of the

Constitution, on which judgment in Umadevi is primarily founded. On the other hand, in Bhonde case, the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi's case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them some purpose which were performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice as enumerated in Schedule IV of MRTP and PULP Act and it necessitates giving direction under Section 30 of the said Act, that the Court would give such a direction.

30. We are conscious of the fact that the aforesaid judgment is rendered under MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/Labour Court by the said Act. At the same time, it also hardly needs to be emphasized the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act, to give reliefs such as a reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

31. In the language of Krishna Iyer, J:

> The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide for 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 counter-productive battles and the assurance of industrial justice may create a climate of goodwill." (Life Insurance Corpn. Of India v. D.J.Bahadur 1980 Lab IC 1218, 1226(SC), per Krishna Iyer,J.).
>
> In order to achieve the aforesaid objectives, the Labour Courts/Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights, with the underlying objective to achieve social justice. Way back in the year 1950 i.e. immediately after the enactment of Industrial Disputes Act, in one of its first and celebrated judgment in the case of Bharat Bank Ltd. V. Employees of Bharat Bank Ltd. [1950] LLJ 921,948-49 (SC) this aspect was highlighted by the Court observing as under:
>
> "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."

32. At the same time, the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in the case of New Maneckchowk Spinning & Weaving Co.Ltd.v. Textile Labour Association [1961] 1 LLJ 521,526 (SC) in the following words:

> "This, however, does not mean that an industrial court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to the matter as laid down by the legislature or by this Court."

33. It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principle of fair play and justice.

34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.

35. The aforesaid examples are only illustrated. It would depend on the facts of each case as to whether order of regularization is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights

36. In the aforesaid backdrop, we revert the facts of the present case. The grievance of the appellants was that under the Scheme contained in Circular dated 6.5.1997 many similarly placed workmen have been regularized and, therefore, they were also entitled to this benefit. It is argued that those

who had rendered 240 days service were regularized as per the provision in that Scheme/Circular dated 6.5.1987.

37. On consideration of the cases before us we find that appellant No.1 was not in service on the date when Scheme was promulgated i.e. as on 6.5.1987 as his services were dispensed with 4 years before that Circular saw the light of the day. Therefore, in our view, the relief of monetary compensation in lieu of reinstatement would be more appropriate in his case and the conclusion in the impugned judgment qua him is unassailable, though for the difficult reasons (as recorded by us above) than those advanced by the High Court. However, in so far as appellant No.2 is concerned, he was engaged on 5.9.1986 and continued till 15.9.1990 when his services were terminated. He even raised the Industrial dispute immediately thereafter. Thus, when the Circular dated 5.9.1987 was issued, he was in service and within few months of the issuing of that Circular he had completed 240 days of service.

38. Non-regularization of appellant No.2, while giving the benefit of that Circular dated 6.5.1987 to other similar situated employees and regularizing them would, therefore, be clearly discriminatory. On these facts, the CGIT rightly held that he was entitled to the benefit of scheme contained in Circular dated 6.5.1987. The Division Bench in the impugned judgment has failed to notice this pertinent and material fact which turns the scales in favour of appellant No.2. High Court committed error in reversing the direction given by the CGIT, which was rightly affirmed by the learned Single Judge as well, to reinstate appellant No.2 with 50% back wages and to regularize him in service. He was entitled to get his case considered in terms of that Circular. Had it been done, probably he would have been regularized. Instead, his services were wrongly and illegally terminated in the year 1990. As an upshot of the aforesaid discussion, we allow these appeals partly. While dismissing the appeal qua appellant No.1, the same is accepted in so far as appellant No.2 is concerned. In his case, the judgment of the Division Bench is set aside and the award of the CGIT is restored. There shall, however, be no order as to costs.

.....J. (K.S.Radhakrishnan) .....J. (A.K.Sikri) New Delhi, February 17, 2014