

[2019] 5 S.C.R. 864

A PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY & ANR.

v.

KARAMJIT SINGH

B (Civil Appeal No. 3925 of 2019)

APRIL 15, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Industrial Disputes Act, 1947:

- C *Termination of service – Without holding inquiry – Propriety of – Regularization of daily wager – Thereafter the regularization was annulled and the service of the employee was terminated – Termination order challenged – Labour Court upheld the order of termination – In writ petition, Single Judge High Court set aside the order passed by Labour Court holding that before terminating the service of permanent employee, authority should have conducted an enquiry – Division Bench of High Court upheld the order of Single Judge in LPA – On appeal, held: Service rendered in pursuance of an illegal appointment or promotion cannot be equated to service rendered in pursuance of a valid and lawful appointment*
- D *– The employee had secured regularization on the basis of interpolation in the final list of employees recommended for regularization – Such an appointment is void ab initio and termination thereof does not require disciplinary proceedings – Termination was justified – Labour Laws.*
- E *– The employee had secured regularization on the basis of interpolation in the final list of employees recommended for regularization – Such an appointment is void ab initio and termination thereof does not require disciplinary proceedings – Termination was justified – Labour Laws.*

F **Allowing the appeal, the Court**

- HELD:** 1. An order of regularization obtained by misrepresenting facts, or by playing a fraud upon the competent authority, cannot be sustained in the eyes of law. If the initial appointment itself is void, then the provisions of the Industrial Disputes Act, 1947 are not applicable for terminating the services of such workman. [Para 5.5][873-D-E]

*Devendra Kumar v. State of Uttaranchal & Ors. (2013)
9 SCC 363 : [2013] 8 SCR 471; Rajasthan Tourism*

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Development Corporation & Anr. v. Intejam Ali Zafri (2006) 6 SCC 275 : [2006] 3 Suppl. SCR 533 ; Bank of India v. Avinash D. Mandivikar (2005) 7 SCC 690 : [2005] 3 Suppl. SCR 170 – relied on A

2. Service rendered in pursuance of an illegal appointment or promotion cannot be equated to service rendered in pursuance of a valid and lawful appointment or promotion. The illegality of such an appointment goes to the root of the respondent's absorption as a regular employee. The respondent could not be considered to be an "employee", and would not be entitled to any benefits under the Regulations applicable to employees of the appellant-Authority. [Paras 6.1 and 6.2][874-B-D] B

Rupa Rani Rakshit & Ors. v. Jharkhand Gramin Bank & Ors. (2010) 1 SCC 345 : [2009] 15 SCR 1133 – relied on. C

Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (1993) 4 SCC 727 : [1993] 2 Suppl. SCR 576 – held inapplicable. D

3. The question of holding disciplinary proceedings as envisaged under Article 311 of the Constitution, or under any other disciplinary rules did not arise in the present case since the respondent was admittedly not an "employee" of the appellant-Authority, and did not hold a civil post under the State Government. He was merely a daily wager on the muster rolls of the appellant-Authority. [Para 7][874-E-F] E

The State of Bihar & Ors. v. Kirti Narayan Prasad 2018 (15) SCALE 352 ; Superintendent of Post Offices & Ors. v. R. Valasina Babu (2007) 2 SCC 335: [2006] 10 Suppl. SCR 1094 – relied on. F

4. The respondent had sought to secure regularization on the basis of interpolation in the final list of employees recommended for regularization. Such an appointment would be illegal and void ab initio, and cannot be sustained. The appellant-Authority rightly terminated the respondent vide Order dated 22.05.2003. [Para 9][875-A-C] G

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Case Law Reference

[1993] 2 Suppl. SCR 576 held inapplicable Para 4.2

[2013] 8 SCR 471 relied on Para 5.5

[2006] 3 Suppl. SCR 533 relied on Para 5.5

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[2005] 3 Suppl. SCR 170 relied on Para 5.5

[2009] 15 SCR 1133 relied on Para 6.1

2018 (15) SCALE 352 relied on Para 7

[2006] 10 Suppl. SCR 1094 relied on Para 7

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3925
of 2019.

From the Judgment and Order dated 09.07.2018 of the High Court of Punjab and Haryana at Chandigarh in L.P.A. No. 894 of 2018.

D

Mrs. Rachana Joshi Issar, K. Vaijayanthi, Shailabh Pandey,
Ms. Prerana Chaturvedi, Advs. for the Appellants.

Mukesh Kumar Sharma, Adv. or the Respondent.

The Judgment of the Court was delivered by

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INDU MALHOTRA, J. Leave granted.

1. The present Civil Appeal has been filed to challenge the final Judgment and Order dated 09.07.2018 passed by a Division Bench of the Punjab & Haryana High Court at Chandigarh, in LPA No. 894 of 2018.

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2. The factual background of the case, is as under:

2.1. On 01.12.1995, the Respondent was appointed as a *Chowkidar* on daily wages by the Appellant – Punjab Urban Planning and Development Authority. His name was on the muster rolls till 31.03.1997.

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2.2. On 23.01.2001, the Government of Punjab revised the Policy for regularization of work-charged / daily wage and other categories of employees.

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As per the revised Policy, all the Departments under the Government of Punjab were directed to prepare lists of work-charged employees, daily wagers, and other similar

- categories of employees, who had completed 3 years of service. From such lists, employees would be absorbed / regularized against regular posts existing in each Department, in order of seniority. A
- 2.3. On 26.12.2001, the Appellant – Authority issued an Office Order regularizing the services of 102 daily wagers as per the State Government's revised Policy dated 23.01.2001. B
- 2.4. The Respondent's name was included in the Office Order issued by the Appellant – Authority. Consequently, his services came to be regularized w.e.f. 06.11.2001. C
- 2.5. Subsequently, two employees of the Appellant – Authority *viz.* Baldev Singh and Rikhi Ram, filed Writ Petition No. 15843 of 2002 before the Punjab & Haryana High Court, challenging the Office Order dated 26.12.2001. The Respondent was impleaded as a party in the said Writ Petition. It was alleged that there were irregularities in the regularization of certain employees, including that of the Respondent. D
- 2.6. The High Court *vide* Order dated 01.10.2002, directed the Appellant – Authority to treat the Writ Petition as a representation on behalf of the writ petitioners, and pass a speaking order within 4 months. E
- 2.7. Pursuant to the direction of the High Court, the Appellant – Authority scrutinized the list of employees who were regularized *vide* Office Order dated 26.12.2001. The Authority called for a report from the Executive Engineer (C/Project – II), Mohali. The report revealed that the Respondent had not completed the requisite period of 3 years' service prior to 22.01.2001. F
- 2.8. The Appellant – Authority issued a Show Cause Notice dated 24.03.2003 to the Respondent directing him to appear before the Chief Administrator of the Appellant – Authority on 31.03.2003 for a personal hearing. G
- 2.9. On 31.03.2003 the Respondent appeared before the Chief Administrator of the Appellant – Authority for the personal hearing. The Chief Administrator found that the Respondent H

- A failed to furnish any evidence whatsoever, documentary or otherwise, or any satisfactory proof of having served the Appellant – Authority for at least 3 years prior to 22.01.2001.
The Chief Administrator *vide* Order dated 22.05.2003, annulled the regularization of the services of the Respondent. It was held that the regularization of the services of the Respondent was not as per the revised Policy issued by the Government of Punjab on 23.01.2001.
- B 2.10. The Respondent challenged the Order dated 22.05.2003 passed by the Chief Administrator, by way of Writ Petition No. 8354 of 2003 before the Punjab & Haryana High Court.
The High Court dismissed the Writ Petition *vide* Order dated 23.10.2003, and granted the Respondent liberty to approach the Labour Court for redressal of his grievances.
- C 2.11. On 20.12.2003, the Respondent raised an industrial dispute against the Appellant – Authority before the Additional Labour Commissioner, Punjab. The matter was referred to conciliation.
Upon failure of the conciliation proceedings, the dispute was referred to the Industrial Tribunal, Patiala.
- D 2.12. The Respondent submitted that his services had been illegally terminated by the Appellant – Authority *vide* Order dated 21.11.2003. He contended that he had continuously worked with the Appellant – Authority from 01.12.1995 till 21.11.2003, and had put in more than 240 days of service in the last calendar year. The Respondent alleged that the termination of his services was in violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947.
- E 2.13. The Appellant – Authority submitted that the Respondent worked as a daily wager, whose name was borne on the muster rolls. As per the record, there were breaks in his service from 01.12.1995 till 31.03.1997. He had put in only 6 months of service prior to 31.03.1997. After 1997, the Respondent was not employed as a daily wager with the Appellant – Authority.
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It was further submitted that the Respondent's name was not included in the original list dated 12.09.2000 forwarded by the Divisional Engineer, PUDA, Mohali to the Superintending Engineer, PUDA, Mohali.

The Respondent's name however came to be included in the final list recommended for regularization, through his connivance with some officials of the Appellant – Authority.

2.14. The Industrial Tribunal, Patiala dismissed the Reference made by the Respondent *vide* Order dated 15.10.2013. It was held that since the entry of the Respondent into service on 26.12.2001 was through wrongful means, his services were rightly terminated *vide* Order dated 22.05.2003.

2.15. Aggrieved by the Order passed by the Industrial Tribunal, the Respondent filed Writ Petition No. 21519 of 2014 before the Punjab & Haryana High Court.

A Single Judge of the High Court *vide* Order dated 07.02.2018, allowed the Writ Petition filed by the Respondent, and set aside the Order dated 15.10.2013 passed by the Industrial Tribunal, Patiala.

The learned Single Judge held that "rightly or wrongly" the Respondent's services had been regularized on 26.12.2001 under the revised Policy of the State Government. Thus, permanent status had been given to the Respondent w.e.f. 26.12.2001.

The learned Single Judge held that it was necessary for the Appellant – Authority to have issued a charge-sheet, conduct an enquiry against a permanent employee, before terminating or dismissing him from service under the Regulations. Undisputedly, since no charge-sheet had been issued, or enquiry conducted, the action of terminating the services of the Respondent by merely issuing a Show Cause Notice, and granting a personal hearing was not sufficient compliance with the Regulations. The order of termination dated 22.05.2003, and the Award of the Industrial Tribunal were set aside.

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- A The learned Single Judge granted liberty to the Appellant – Authority to take necessary action against the Respondent under the statutory Regulations. It was ordered that the Appellant – Authority pass a final order after conducting a disciplinary enquiry against the Respondent. The Respondent shall be deemed to be under suspension, from the date on which his services were terminated *i.e.* 22.05.2003 till the date of passing of the final order.
- B The Appellant – Authority was further directed to calculate, and disburse subsistence allowance to the Respondent from 22.05.2003 onwards, and continue to disburse the same till conclusion of the disciplinary proceedings against him.
- C 2.16. Aggrieved by the Order of the learned Single Judge, the Appellant – Authority filed LPA No. 894 of 2018 before the Division Bench of the Punjab & Haryana High Court.
- D The Division Bench dismissed the LPA filed by the Appellant – Authority *vide* impugned final Judgment and Order dated 09.07.2018, and affirmed the Order dated 07.02.2018 passed by the Single Judge. It was held that the Punjab Urban Planning & Development Authority Employees (Punishment and Appeal) Regulations, 1997 contained provisions for initiation of regular departmental enquiry before dismissal or termination of a regular employee. The termination of the services of the Respondent by mere issuance of a Show Cause Notice was not only *de hors* the Regulations, but also contrary to the principles of natural justice.
- E 2.17. The Appellant – Authority filed the present Civil Appeal to challenge the Judgment and Order dated 09.07.2018 passed by the Division Bench of the Punjab & Haryana High Court.
- F On 22.11.2018, this Court issued Notice to the Respondent, subject to the Appellant – Authority depositing Rs. 25,000/- towards Costs of litigation for the Respondent. The Appellant – Authority deposited the aforesaid amount in this Court.
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3. We have heard Mrs. Rachana Joshi Issar, learned Counsel for the Appellant – Authority, who *inter alia* submitted as under:

3.1. The Respondent worked with the Authority as a daily wager, whose name was on the muster rolls from 01.12.1995 till 31.03.1997. He had put in only 6 months of service prior to 31.03.1997, and was not in service thereafter. Therefore, he was not eligible to be regularized under the State Government's revised Policy dated 23.01.2001 which required an employee to have completed 3 years' of continuous service prior to 22.01.2001, so as to be eligible for regularization.

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It was further submitted that the Respondent had fraudulently, and in connivance with some officials of the Appellant – Authority, got his name surreptitiously included in the final list of employees recommended for regularization.

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3.2. The report submitted by the Executive Engineer (C/Project – II), Mohali to the Chief Administrator showed that the Respondent had not fulfilled the mandatory pre-requisite of having served for 3 years' or more up till 22.01.2001.

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The Chief Administrator *vide* Order dated 22.05.2003 annulled the Office Order dated 26.12.2001 *qua* the regularization of the services of the Respondent.

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3.3. It was further submitted that the Appellant – Authority conducted a disciplinary enquiry against the officials who had recommended the name of the Respondent for regularization. The Enquiry Report dated 25.01.2005 found four officials to have supplied wrong information with respect to the regularization of the Respondent, and some other daily wagers who had less than 3 years' service.

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Since the appointment of the Respondent on regular basis was void on account of having been fraudulently obtained by collusion, the Respondent was not entitled to the protection under the provisions of the Industrial Disputes Act, 1947.

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A 4. Mr. Mukesh Kumar Sharma, learned Counsel appearing on behalf of the Respondent, submitted that:

4.1. There was no infirmity in the Orders passed by the Single Judge and Division Bench of the High Court.

B 4.2. It was submitted that the present case was covered by the decision in *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.*,¹ rendered by a Constitution Bench of this Court.

C 5. We have carefully perused the pleadings and the written submissions made by the parties, and also considered the submissions made at the oral hearing.

D 5.1. In the present case, the Respondent had sought to secure regularization of his services, even though he did not fulfill the pre-requisite of a minimum of 3 years of continuous service prior to 22.01.2001 as per the revised Policy of the Government of Punjab for regularization of work-charged, daily wage, and other similar categories of employees.

The Respondent had failed to produce any evidence whatsoever to support his claim for regularization.

E 5.2. The Respondent had sought to have his name included in the final list recommended for regularization by colluding with certain officials of the Appellant – Authority, who had interpolated his name in the final list forwarded to the Authority.

F 5.3. The Appellant – Authority has filed a copy of the original list dated 12.09.2000 prepared by the Divisional Engineer, Mohali. The said list included the names of 21 employees whose names were initially recommended for regularization.

G A perusal of the list dated 12.09.2000 reveals that the Respondent's name was initially not recommended for regularization. However, in the final list forwarded to the Appellant – Authority, the Respondent's name was interpolated.

H ¹(1993) 4 SCC 727.

- 5.4. An enquiry was duly conducted to determine whether wrong information had been supplied by the concerned officials of the Authority, so that the Respondent could get the benefit of regularization. A

The enquiry conducted by the Appellant – Authority revealed that the officials were guilty of supplying wrong information to the authorities regarding the period of service rendered by some daily wagers, including the Respondent. The officials had failed to verify the information provided, before forwarding it to the Authority. As a consequence, punitive orders were passed against each of the officials. B

In these circumstances, the Respondent was disentitled from getting the benefit of a regular appointment with the Appellant – Authority, in the absence of fulfilling the pre requisite requirement. C

- 5.5. It is well settled that an order of regularization obtained by misrepresenting facts, or by playing a fraud upon the competent authority, cannot be sustained in the eyes of law.² D

In *Rajasthan Tourism Development Corporation & Anr. v. Intejam Ali Zafri*,³ it was held that if the initial appointment itself is void, then the provisions of the Industrial Disputes Act, 1947 are not applicable for terminating the services of such workman. E

In a similar case, this Court in *Bank of India v. Avinash D. Mandivikar*,⁴ held that since the respondent had obtained his appointment by playing fraud, he could not be allowed to get the benefits thereof. F

6. In the present case, the Single Judge had held that “rightly or wrongly”, the Respondent had obtained regularization, and was therefore entitled to a disciplinary enquiry. The Division Bench affirmed the Judgment of the Single Judge. G

- 6.1. The High Court however failed to appreciate that the decision in *Managing Director, ECIL, Hyderabad (supra)*

²*Devendra Kumar v. State of Uttaranchal & Ors.* (2013) 9 SCC 363.

³(2006) 6 SCC 275.

⁴(2005) 7 SCC 690. H

- A is applicable to “employees” of Government Departments. Since the very appointment of the Respondent on regular basis was illegal, he could not be treated as an “employee” of the Appellant – Authority.
- B In *Rupa Rani Rakshit & Ors. v. Jharkhand Gramin Bank & Ors.*,⁵ this Court held that service rendered in pursuance of an illegal appointment or promotion cannot be equated to service rendered in pursuance of a valid and lawful appointment or promotion.
- C 6.2. The illegality of such an appointment goes to the root of the Respondent’s absorption as a regular employee. The Respondent could not be considered to be an “employee”, and would not be entitled to any benefits under the Regulations applicable to employees of the Appellant – Authority.
- D Therefore, the High Court erroneously placed reliance on the decision in *Managing Director, ECIL, Hyderabad (supra)*, which would not be applicable to the facts of the present case.
- E 7. The question of holding disciplinary proceedings as envisaged under Article 311 of the Constitution, or under any other disciplinary rules did not arise in the present case since the Respondent was admittedly not an “employee” of the Appellant – Authority, and did not hold a civil post under the State Government.⁶ He was merely a daily wager on the muster rolls of the Appellant – Authority.
- F 8. It is abundantly clear from the facts of the case, and the material on record that the regularization of the services of the Respondent was illegal and invalid. The Respondent was provided a full opportunity to adduce evidence to establish that he had 3 years’ continuous service prior to 22.01.2001. However, he failed to furnish any proof whatsoever to substantiate his claim.
- G 9. In light of the aforesaid discussion, the present Civil Appeal is allowed, and the Order dated 09.07.2018 passed by the Division Bench of the Punjab & Haryana High Court is set aside.

⁵(2010) 1 SCC 345.

⁶*The State of Bihar & Ors. v. Kirti Narayan Prasad*, 2018 (15) SCALE 352; *Superintendent of Post Offices & Ors. v. R. Valasina Babu*, (2007) 2 SCC 335.

The appointment of the Respondent on regular basis was invalid A since the Respondent did not have the pre-requisite experience of 3 years' continuous service prior to 22.01.2001.

The Respondent had sought to secure regularization on the basis of interpolation in the final list of employees recommended for regularization. Such an appointment would be illegal and void *ab initio*, B and cannot be sustained.

The Appellant – Authority rightly terminated the Respondent *vide* Order dated 22.05.2003.

The Respondent is however entitled to withdraw the amount of Rs. 25,000/- towards Costs, deposited by the Appellant – Authority pursuant to the Interim Order dated 22.11.2018 passed by this Court. The Registry is directed to release the said amount in favour of the Respondent. C

Pending applications, if any, are accordingly disposed of. D

Ordered accordingly.

Kalpana K. Tripathy

Appeal allowed.