Sudarshan Rajpoot vs U.P.State Road Trsnport Corp on 18 November, 2014

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Bench: C. Nagappan, V.Gopala Gowda

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 10353-10354 OF 2014
(Arising out of SLP(C) NOS. 31173-31174 OF 2010)

SUDARSHAN RAJPOOT …APPELLANT

Vs.

U.P. STATE ROAD TRANSPORT CORPORATION …RESPONDENT

J U D G M E N T

V.GOPALA GOWDA, J.

Leave granted.

2. These civil appeals are directed against the impugned judgment and orders dated 5.3.2008 and 3.8.2010 passed in Civil Misc. Writ Petition No. 21553(C) of 2005 and Civil Misc. Review Application No. 93051 of 2008 by the High Court of Judicature at Allahabad. Vide order dated 05.03.2008 the High Court allowed the writ petition filed by the respondent- U.P. State Road Transport Corporation (in short 'the respondent-Corporation') and quashed the award dated 31.05.2004 passed by the Labour Court and held that the appellant-workman would be entitled to consolidated damages/compensation equivalent to the retrenchment compensation calculated from the date of his engagement till the date of his disengagement. The Review Application of the Corporation was rejected.

3. Brief facts in nutshell are stated hereunder for the purpose of appreciating rival legal contentions with a view to find out as to whether the impugned judgment is required to be interfered with or not by this Court in exercise of its appellate jurisdiction.

4. On 11.03.1997 the appellant-workman Sudarshan Rajpoot was appointed to the post of Driver at Azad Nagar Depot, Kanpur, in the respondent- Corporation. On 07.06.1999 the appellant-workman was driving a vehicle bearing No.UAN 8582 on the Deora to Kanpur route, when all of a sudden the steering became free due to the iron ball of the tyre being damaged and he lost control over the vehicle. As a result of which the vehicle met with an accident and the appellant-workman broke both his legs. He was admitted in Lucknow Medical College and his treatment continued till 09.08.2000. On 10.8.2000, he presented himself for duty with a fitness certificate, when he was told orally that his name was struck off from the rolls of post of driver and has been removed from the services of the Corporation. No order of termination from his services was served upon the appellant-workman on that day. It is the case of the appellant-workman that he had worked for more than 240 days continuously in a calendar year from the date of his appointment till the date of his termination from the services of the respondent-Corporation.

5. The appellant-workman raised an industrial dispute before the Conciliation Officer questioning the correctness of the order of termination dated 29.07.2000 under the provisions of the U.P. Industrial Disputes Act, 1947 (for short “the U.P.I.D, Act”).

The State Government of Uttar Pradesh, which is the appropriate State Government under the U.P.I.D. Act to make an order of reference to either the Labour Court or Industrial Court for adjudication of the industrial dispute between the workman and their employer, exercised its statutory powers under Section 4-K of the U.P.I.D Act and referred the dispute to the Labour Court vide its order No. 483-85 KR (Branch Secretary) CP493/2000 dated 9.4.2001 to adjudicate the following point of dispute whether the termination of services of the appellant-workman by the respondent- Corporation vide order dated 29.7.2000 is proper and valid? If not then whether the concerned appellant-workman is entitled to receive interest/compensation?

6. The said order of reference was registered as Industrial Dispute No.52 of 2001 by the Labour Court. The Labour Court has adjudicated the dispute, after affording an opportunity to the parties and rejected the plea of the respondent-Corporation that the appellant-workman was working on contract basis. Further, the Labour Court adverted to an undisputed fact that the order of termination was not preceded by any departmental inquiry required to be conducted by the Corporation. It was also noted by the Labour Court that no evidence on record was adduced before it to prove the allegation made in the order of termination that the accident occurred on account of the negligence on the part of the appellant-workman.

7. The Labour Court has held that the workman had worked for more than 240 days in a calendar year and that he was removed from his post on 29.07.2000 by the Corporation without any valid reasons. In the order of termination, it has been specifically stated that his name was struck off from the contract roll. The finding of fact recorded by the Labour Court on appreciation of the pleadings and evidence on record was that the termination of the services of the appellant-workman was

contrary to law and accordingly set aside the same & passed an Award. The Corporation was directed to reinstate the appellant-workman without any break in service in the post of driver and pay all his dues, salary etc. from the date of termination of his services and also further directed to the Corporation to continue to pay in future also.

8. The said award was challenged by the respondent-Corporation before the High Court questioning the correctness of the findings of fact inter alia, contending the finding recorded by the Labour Court in its Award that the appellant-workman was a permanent employee of the Respondent-Corporation without there being any evidence on record and therefore, the same is erroneous in law. Reliance was placed on the decision of this Court in the case of Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.[1] in the matter of appointment of the appellant-workman as he was appointed on temporary/contractual basis.

9. The High Court has set aside award of reinstatement and consequential reliefs granted by the Labour Court in its Award after referring to the decisions of this Court in the cases of Haryana State Electronics Development Corporation Ltd. v. Mamni[2]. The High Court held that the appellant-workman was entitled to consolidated damages/compensation equivalent to the retrenchment compensation calculated from the date of the workmen's engagement till the date of his disengagement.

10. The correctness of the impugned Judgment and order of the High Court is questioned by the appellant-workman before this Court by raising various questions of law and urging various grounds in support of the same and prayed for restoration of the award passed by the Labour Court.

11. The legal questions raised in this appeal are that the High Court has failed to consider Section 6R of the U.P.I.D. Act, where the effects of laws inconsistent with Sections 6J to 6Q are dealt with. Sections 6N and 6Q (which are equivalent to Sections 25F and 25H of the Industrial Disputes Act, 1947) have an overriding effect on all laws, as such non-compliance of mandatory provisions of Sections 6N and 6Q rendered the order of termination passed against the appellant void ab initio in law. The conditions precedent as laid down under Section 6-N of the U.P.I.D. Act for retrenchment of workmen have not been complied with though the appellant- workman has put in continuous service of more than 240 days in a calendar year from the date of appointment till the date of his termination passed by the Respondent-Corporation. Non-consideration of this important legal aspect of the case by the High Court while setting aside the finding of facts recorded by the Labour Court in its Award that the order of the respondent-Corporation terminating the services of the appellant-workman & non-compliance of mandatory provision of Section 6-N of the U.P.I.D. Act, rendered the order of termination void ab initio in law.

12. It has been contended by the learned counsel for the appellant-workman that the High Court has erred in placing reliance upon the decision of this Court in Uma Devi case (supra), which was distinguished in as much as the said case is not applicable to the case on hand for the reason that the appellant-workman is a "workman" as defined under Section 2(z) of the U.P.I.D. Act and the respondent is the Statutory Corporation which is an undertaking of the State Government and therefore, it is an instrumentality of the State Government, it will come within the definition of

"Industry" as defined under Section 2(k) of the U.P.I.D. Act. Therefore, the said provisions of the U.P.I.D. Act are applicable to the appellant-workman as he is a "workman" as defined under Section 2(z) of the U.P.I.D. Act and Section 2(s) of the I.D. Act, 1947.

13. Further, it is contended that the High Court has failed to consider the "Unfair Labour Practice" as defined under Section 2(ra) of the I.D. Act, 1947 read with Sections 25T and 25U and V Schedule of the I.D. Act. Para 10 of the V Schedule of the I.D. Act prohibits the employer to employ workmen as badlis, casuals or temporaries and to continue them as such for years in the Corporation, with the object of depriving them of the status and privileges of permanent workmen is prohibited. It is further contended that the respondent-Corporation is liable for penal action under the provisions of Section 25U of the I.D. Act. In support of the above contention, reliance was placed on 3 Judge Bench decision of this Court in the case of Chief Conservator of Forests and Anr. v. Jagannath Maruti Kondhare & Ors[3].

14. On the other hand, the learned counsel appearing on behalf of the respondent-Corporation sought to justify the correctness of the finding and reasons recorded by the High Court in the impugned judgment. Alternatively, it is contended that even if the order of termination is bad in law, the workman who is working on the contract basis is not entitled for reinstatement with full back-wages as per the view taken by this Court in several decisions. Therefore, the learned counsel for the respondent- Corporation submits that the impugned judgment and order need not be interfered with by this Court in exercise of its appellate jurisdiction.

15. With reference to the above said rival legal contentions the following substantial questions would arise for our consideration:

> Whether the High Court is justified in passing the impugned judgment, order and reversing the award passed by the Labour Court? Whether the order of termination passed against the appellant-workman amounts to retrenchment as defined under Section 2(s) of the U.P.I.D. Act, 1947?
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> Whether non-compliance of the statutory provisions under Sections 6-N and 6- Q of the U.P.I.D. Act which are analogous with 25-F and 25-H respectively of the I.D. Act,1947 renders the order of termination void ab initio in law?
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> What relief the appellant-workman is entitled to?

16. To answer the above substantial questions of law it is necessary for this Court to extract the order of termination passed by the Assistant Regional Manager of the Corporation, which reads thus:

> " OFFICE OF ASSISTANT REGIONAL MANAGER, U.P. TRANSPORT CORPORATION, AZAD NAGAR DEPOT Letter No.ARM/A.Ngr/Bus Accident 0582/2000/3591 dated 29.7.2000 OFFICE ORDER On 7.6.1999 vehicle bearing No. 8582 which had met an accident which was being driven on 7.6.1999 by Shri Sudharshan Rajput contractual driver and conductor Shri Kamta Prasad on Deoria to

Kanpur route and accident occurred on the way at 1:30 a.m. in the night at village Palhari, Barabanki near Police Station Safdarganj and due to negligent driving of the driver, department suffered heavy loss.

Hence in order to meet departmental loss, forfeiting security of driver Shri Sudharsan Rajput, I pass the order to struck off his name from the contract roll with an immediate effect. His name be struck off from contract roll.

Sd/(Illegible) (Sad Sayed) Assistant Regional Manager, Azad Nagar, Depot" (emphasis laid by this Court) In the aforesaid order of termination it is specially mentioned that the appellant-workman was appointed as a driver on contractual basis. It has been further stated that the accident occurred on 07.06.1999 due to the negligent driving of the appellant-workman resulting in heavy loss to the department of the respondent-Corporation. In order to meet the departmental loss, security amount of driver was forfeited and Assistant Regional Manager had struck off the name of the appellant-workman from the contract employees roll with immediate effect. The respondent-Corporation has neither produced documentary evidence nor showed before the Labour Court that the appellant-workman was appointed on contract basis. The fact that he deposited Rs.2000/- towards security amount with the respondent- Corporation indicates that he was working as the Driver on a permanent basis. In view of the Schedule V, entry No. 10 of the I.D. Act,1947 the respondent-Corporation is prohibited from engaging the appellant-workman as a badli, casual or temporary workman to work on permanent basis. The fact that he had been continuously working for more than 3 years and he had rendered more than 240 days of service as the driver in a calendar year until his termination order and yet he being engaged on a contractual basis in the respondent-Corporation is statutorily prohibited. The same amounts to an unfair labour practice as defined under Section 2(ra) read with Section 25T, which action of the Corporation is punishable under Section 25U of the I.D. Act. This legal position is settled by this Court in Chief Conservator of Forest case (supra) wherein it was held as under:-

"22..... In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case in as much as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees in as much as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Rarwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because

> of increase in pollution. Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants."

17. In the absence of the documentary evidence to justify the plea taken by the Respondent-Corporation that the appellant-workman was a contract employee in the order of termination it remained as a plea and not a proven fact of assertion. Therefore, the appellant-workman is considered to be permanent workman. Further, the appellant-workman has clearly stated in his affidavit before the High Court that at the time of termination his juniors were working on permanent basis. Therefore, the same is another added fact to accept the contention of the appellant-workman by the Labour Court that he was appointed as a permanent workman in the respondent-Corporation as a driver.

18. The reference of the industrial dispute to the Labour Court regarding the justification of the order of termination passed against the appellant- workman was made by the State Government in exercise of its statutory power under the U.P.I.D. Act. The burden to justify the same lies on the respondent-Corporation, the same has not been discharged by producing cogent evidence on record before the Labour Court. Therefore, the finding of fact recorded by the Labour Court while answering the point of dispute referred to it by placing reliance upon the evidence of the employer-EW1 wherein he admitted that the appellant-workman was appointed on permanent basis in the post of driver at Azad Nagar Depot of the respondent- Corporation. The finding of fact was recorded by the Labour Court accepting the evidence of EW 1 that the appellant-workman has worked continuously from 11.3.1997 to 29.07.2000 in the respondent-Corporation. Therefore, the Labour Court has rightly come to conclusion and held that the appellant- workman has rendered more than 240 days continuous service from the date of his appointment till the date of passing the termination order.

19. It is the case of retrenchment as the termination of the appellant from his services is otherwise for misconduct, in view of the admitted fact mentioned in the order of termination that his name was struck off from the contract roll. Merely because the words mentioned as "contractual driver" in the termination order dated 29.7.2000 to strike off his name from the contract employees roll does not automatically prove that he has worked as the driver on contract basis in the respondent-Corporation.

20. The finding of fact recorded by the Labour Court in its award on proper appreciation of undisputed facts and evidence on record, has been rightly held that the termination order amounts to retrenchment and non compliance of the statutory provisions under Sections 6-N, 6-R and 6-Q of the U.P.I.D. Act has rendered the order of termination void ab initio in law. Therefore, the Labour Court was justified in passing the award of reinstatement after setting aside the order of termination and awarded consequential benefits and such as back-wages from the date of termination till date of reinstatement and further direction to pay future salary to the appellant- workman.

21. In the order of termination, it is alleged that on account of negligent driving of the bus by appellant-workman the accident of the vehicle happened, the said allegation was neither proved in the inquiry required to be conducted nor producing evidence before the Labour Court by the respondent-Corporation. Therefore, the High Court has failed to examine the above vital aspects of the case on hand and erroneously interfered with the award passed by the Labour Court in exercise of its extraordinary and supervisory jurisdiction under Articles 226 & 227 of the Constitution of India. This exercise of power is contrary to the law laid down by this Court in the case of Harjinder Singh v. Punjab State Warehousing Corporation[4], wherein this Court held thus:-

> "17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State"
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> - State of Mysore v. Workers of Gold Mines AIR 1958 SC 923." Therefore, we have to hold that the High Court has erroneously exercised its supervisory jurisdiction under Articles 226 & 227 of the Constitution of India, in interfering with the findings of fact recorded in the award by the Labour Court and setting aside the same and in lieu of the same it awarded retrenchment compensation from the date of appointment till the date of disengagement. The impugned Judgment and order passed by the High Court is not only erroneous but suffers from error in law as it has failed to follow the principles laid down by this Court in the above case. Therefore, the same is liable to be set aside.

22. Further, the reliance placed upon the decision of this Court on Uma Devi (supra) case by the High Court to reverse the finding of fact recorded in the award in favour of the workman in answering the points of dispute in the negative, is not tenable in law in view of the judgment of this Court in Maharashtra State Road Transport Corpn. & Anr. v. Casteribe Rajya Parivahan Karmchari Sanghatan[5], wherein, this Court after adverting to Uma Devi's case (supra) at para 36, has held that the said case 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 the Schedule IV where the posts on which they have been working exist. Further, this Court held that Uma Devi's case cannot be held to have overridden the powers of 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 the Schedule IV is established.

23. We are of the opinion that the view taken in Maharashtra State Road Transport Corpn. & Anr.(supra) at para 36 after distinguishing Uma Devi's case is the plausible view. Therefore, we have to hold that the finding of the High Court in setting aside the finding of fact recorded by the Labour Court in its award by applying Uma Devi case (supra) is wholly untenable in law. Therefore, the same is set aside by this Court.

24. This Court in the later judgment in the case of Hari Nandan Prasad & Anr. v. Employer I/R to Management of Food Corporation of India & Anr.[6], after adverting to the law laid down in U.P. Power Corporation v. Bijli Mazdoor Sangh[7] and Maharashtra State Road Transport Corpn. & Anr. (supra) wherein Uma Devi's case is adverted to in both the cases, held that on a harmonious reading of the two judgments, even when there are posts available, in the absence of any unfair labour practice the Labour Court cannot give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, such a direction cannot be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. It was held at para 32 in the Hari Nanda Prasad case (supra) as under:-

> "32. However, the Court in Maharashrtra SRTC case also found that the 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/casual/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." Further, Hari Nandan Prasad & Anr. (supra) referred at para 36, the case of LIC v. D.J. Bahadur[8] in which the relevant para 22 of LIC (supra) case extracted as under :-
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> "36....."22. The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide 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 counterproductive battles and the assurance of industrial justice may create a climate of goodwill." 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:
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> "61.....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." And again at para 37, observing that the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in New Maneck Chowk Spg. & Wvg. Co. Ltd. v. Textile Labour Assn.[9], the relevant para 6 of which is extracted as under :-
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> "37...."6. ... 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 that matter as laid down by the legislature or by this Court."
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> 38. 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."

25. In view of the aforesaid statement of law laid down by this Court after adverting to the powers of the Industrial Tribunal and the Labour Court as interpreted by this Court in the earlier decisions referred to supra, the said principle is aptly applicable to the fact situation of the case on hand, for the reason that the Labour Court recorded a finding of fact in favour of the workman that the termination of services of the appellant herein is not legal and valid and further reaffirmed the said finding and also clearly held that the plea taken in the order of termination that he was appointed on contract basis as a driver is not proved by producing cogent evidence. Further, we hold that even if the plea of the employer is accepted, extracting work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. Therefore, we have held that it amounts to an unfair labour practice as defined under 2(ra) of the I.D. Act, 1947 read with Sections 25T which is prohibited under Section 25U, Chapter VC of the I.D. Act, 1947. We have to hold that the judgment of the High Court in reversing the award is not legal and the same is set aside by us.

26. Further, the conditions precedent to the retrenchment of workmen under Section 6-N of the U.P.I.D. Act have not been satisfied before terminating the services of the appellant-workman in the case on hand. Section 6-N of the U.P.I.D. Act states as follows:

> "6-N. Conditions precedent to retrenchment of workman.- 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,- 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;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service; the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and Notice in the prescribed manner is served on the State Government." Thus, non-compliance with the mandatory provisions under Section 6-N of the U.P.I.D. Act rendered the retrenchment of the workman void ab initio in law. This position of law is well settled by this Court in the case of Delhi Cloth & General Mills Ltd v. Shambhu Nath Mukherjee & Ors[10] which states as under:-

"On the face of it, the order striking off the name of the workman from the rolls on August 24, 1965, is clearly erroneous. No order, even under section 27(c) of the Standing Orders, could have (1) [1957] SCR 335. been passed on that date. The clause in the Standing Orders reads as follows :-

"If any workman absents for more than eight consecutive days his services shall be terminated and shall be treated having left the service without notice".

The workman last attended work on 14th August, 1965. 15th August was a public holiday. He was, therefore, absent from work only from 16th of August. So even under the Standing Orders the workman was not absent for "more than eight consecutive days" on 24th August, 1965. The order is, therefore, clearly untenable even on the basis of the Standing Orders. It is not necessary to express any opinion in this appeal whether "eight consecutive days" in the Standing Orders mean eight consecutive working days. Striking of the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of section 2(00) of the Act. There is nothing to show that the provisions of section 25F (a) and (b) were complied with by the management in this case. The provisions of section 25F(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of 'these two peremptory conditions precedent, is invalid." (emphasis laid by this Court) This position of law was also reiterated in L. Robert D'souza v. Executive Engineer, Southern Railway & Anr[11] and approved by the Constitution Bench of this Court in Punjab Land Development And Reclamation Corporation Ltd., Chandigarh (supra). Therefore, the Labour Court has rightly set aside the order of termination by the respondent-Corporation while adjudicating the point of dispute which has been referred to it by the State Government, the same is perfectly legal and valid and therefore it should not have been interfered with by the High Court in exercise of its Supervisory Jurisdiction.

27. Under Section 2(z) of the U.P.I.D. Act, "workman" whether daily wage, casual and temporary workman or permanent workmen, all are workmen for the purpose of the U.P.I.D. Act. There is no classification of workmen such as permanent, temporary or casual under the U.P.I.D. Act. The classification of workmen either in the Recruitment Rules & Regulations or under the Model

Standing Orders framed by the State Government under the Industrial Employment (Standing Orders) Act, 1946, are applicable to the Respondent- Corporation in the absence of service regulations framed by the respondent- Corporation.

28. Further, the alleged misconduct of negligent driving of the vehicle by the appellant-workman on the date of the accident, the argument advanced by the respondent-Corporation is falsified by documents produced by the workman in CA-1 and CA-2 of the counter affidavit filed before the High Court wherein it is specifically pleaded by the appellant-workman that he got severe injuries in the accident due to mechanical defect of the vehicle which is admitted by the Assistant Regional Manager of the respondent- Corporation. Annexures CA-1 and CA-2 and the Commissioner for Workmen's Compensation under the Employees Compensation Act, 1923, treated the appellant-workman to be a workman under the provisions of Employees Compensation Act, 1923 and passed an order on 8.1.2000 in favour of the appellant-workman. The said order became final and was not challenged by the respondent-Corporation. This clearly proves the fact that the appellant- workman sustained injuries in the accident that occurred on account of the mechanical defect of the vehicle involved in the accident. The plea taken by the respondent-Corporation that the order of termination was passed against the appellant-workman as the accident occurred on account of negligent driving of the vehicle by the appellant-workman is not proved by the respondent-Corporation in order to justify the same. This aspect of the matter has not been discussed either by the Labour Court or by the High Court.

29. Further, it is important for us to examine another aspect of the case on hand with respect to reinstatement, back-wages and the other consequential benefits to be awarded in favour of the appellant-workman. In the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed) and Ors.[12] , after referring to three Judge Bench Judgments with regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award back-wages if order of termination/dismissal is set aside, law has been laid down in this regard by this Court as under:-

> "17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the

> employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.
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> Therefore, keeping in mind the principles laid down by this Court in the above case, we are of the opinion that the appellant-workman should be paid full back-wages by the respondent-Corporation.

30. Since the order of termination is set aside, having regard to the finding of fact recorded by the Workmen's Compensation Commissioner while determining the claim under the Workmen's Compensation Act, the appellant- workman sustained grievous injuries to his legs which is an employment injury suffered during the course of employment in the respondent- Corporation. In the matter of the rights and protection of the appellant- workman we refer to the decision of this Court in the case of Bhagwan Dass & Anr v. Punjab State Electricity Board[13]:-

> "4. Here ....It may further be noted that the import of Section 47 of the Act was considered by this court in Kunal Singh vs. Union of India & Anr. [2003 (4) SCC 524] and in paragraph 9 of the decision it was observed and held as follows :
>
> Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of disability and person with disability. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employee shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled

persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service." Therefore, the respondent-Corporation is statutorily obliged under Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to provide alternate equivalent job to the appellant-workman in place of the post of driver. Therefore, we direct accordingly.

31. In the result, the impugned Judgment and orders are set aside. The appeals are allowed. The respondent-Corporation is directed to reinstate the appellant-workman with 50% back-wages from the date of termination till the date of the Award of the Labour Court and further award 100% back-wages from the date of Award of the Labour Court till the date of reinstatement with all consequential reliefs and other monetary benefits including the continuity of service in an alternative equal job with the same pay-scale as that of a driver. It is needless to state that the back-wages shall be calculated as per the provisions of pay scales revised to the employees of the respondent-Corporation from time to time. The respondent-Corporation is further directed to comply with the order within 4 weeks from the date of receipt of the copy of this Judgment. There shall be no order as to costs.

.....J.

[V.GOPALA GOWDA]

.....J.

[C. NAGAPPAN]

New Delhi, November 18, 2014

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[1] (2006) 4 SCC 1
[2] (2006) 9 SCC 434
[3] (1996) 2 SCC 293
[4] (2010) 3 SCC 192
[5] (2009) 8 SCC 556
[6] (2014) 7 SCC 190
[7] (2007) 2 SCC 755
[8] (1981) 1 SCC 315
[9] AIR 1961 SC 867
[10] (1977) 4 SCC 415
[11] (1982)1 SCC 645
[12] (2013) 10 SCC 324
[13] (2008) 1 SCC 579

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