IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (L) No. 4620 of 2011

Employer in relation to Management of Food Corporation of India, a body corporate, incorporated under the Food Corporations Act, 1964, through its Area Manager, District Officer Chhapra, P.O. , P.S. and Dist.- Chhapra, Bihar

..... Petitioner

Versus

Madan Mohan Singh, son of Pradip Narayan Singh, represented by State Joint Secretary, FCI Executives Staff Union of Arunachal Building, P.O.- Exhibition Road, P.O. & P.S.-Exhibition Road, Dist.- Patna, Bihar

..... Respondent

For the Petitioner	:	Mr. Shubham Sinha, Adv.
		Mr. Nipun Bakshi, Adv.
		Mr. Mrinal Singh, Adv.
For the Respondent	:	Mr. Abhijeet Kr. Singh, Adv.
		Mr. Harsh Chandra, Adv.
		Ms. Ayushi, Adv.
		Mr. Saif Ali Ansari, Adv.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This writ petition has been filed invoking the jurisdiction of this court under Article 226 of the Constitution of India, with a prayer to set aside the award dated 04.11.2009 passed in Reference Case no. 121 of 1994, by which, the Central Government Industrial Tribunal No. 1 , Dhanbad has held in the award that the action of the management of the FCI in not regularising the services of the class IV workman, denying all other benefits, with effect form 22.04.1984 to Madan Mohan Singh- causal workman, is not legal

and justified hence, the respondent workman is entitled for regularisation of class IV workman with effect from 22.04.1984 with 50% back wages and other consequential benefits.

3. The brief facts of the case is that Central Government, Ministry of Labour, in exercise of power conferred under clause (d), sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947, referred the following dispute for adjudication to the Central Government Industrial Tribunal:-

"*Whether the action of the management of FCI, in not regularising the services of class IV workman and denying wages and all other benefits of a regular class IV, workman w.e.f. 22.04.1984, to Shri Madan Mohan Singh, casual workman is legal and justified? If not, to what relief the workman is entitled to?*"

4. The case of the respondent workman of this writ petitioner is that the respondent workman was employed by the writ petitioner management at Food Storage Depot of Hazipur on 22.04.1984 as causal workman to perform the duty of the subordinate cadre on pay roll and since then, he had been performing his duty as a regular class IV employee, without any break to the full satisfaction of the management. Under a scheme, the writ petitioner management, decided to regularise the causal workman, who have completed at least 90 days of service on or before 02.05.1986 as per their qualification against entry level class III and class IV post in the light of the headquarter circular dated 06.05.1987 and accordingly, many causal / daily related workmen were regularised as the watchmen in the year 1988-89 and they are getting wages and all other benefits of regular class IV workmen of the management.

5. The case of the management is that though the respondent workman has been continuing to render his services to writ petitioner since 22.04.1984 but he was engaged only as causal

labour from time to time to carry out some odd jobs at the depot office by cleaning the office room and the furniture, which takes half an hour and also to fetch drinking water and storing the same in pitchers. In support of his contention, the workman examined himself as sole witness besides proving the documents, which have been marked as Exhibit W1 while from the side of the writ petitioner management, two witnesses were examined and two documents have been proved which have been marked as Ext. M-1/1 and Ext. M-1/2. Learned tribunal considered the testimony of workman to the effect that on the basis of the said circular of the year 1986-87, a number of causal workers were regularised, hence the workman being similarly placed, with the other workers, who have been regularised, the petitioner-workman be also regularised.

6. Learned tribunal after considering the materials available in the record, came to the conclusion that the communication made by the regional office at Patna, to the Zonal Manager requesting therein in the last but one para, that compromise with the workman-respondent of this writ petition, may give good effect, whenever, the respondent likes to forego the past benefit and from that, the tribunal concluded that the workman has been discharging his duties as class IV workman as sweeper from cleaning of office and godown and opening and cleaning of godown and sheds and is also doing other miscellaneous works of messenger and the tribunal came to the conclusion that the respondent workman was discharging his duties as sweeper and messenger which are substantive posts in the writ petitioner corporation. From Ext. W3, the tribunal came to the conclusion that there are huge vacancies, hence in the light of the judgment of the Hon'ble Supreme Court of India in the case of **Bhagwati Prasad vs. Delhi State Mineral Development Corporation** reported in **AIR 1990 SC 371**, the workman is entitled to get

wages and other benefits of regular employees since 22.04.1984 and being thus satisfied, passed the said order.

7. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Vice Chancellor Lucknow University vs Akhilesh Kumar Khare & Anr.** reported in (**2016) 1 SCC 521** and submits that as observed in para 17 of the said judgment, causal workers do not have any vested right to be regularised on the posts. It is submitted by learned counsel for the petitioner that the judgment of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka and Others v. Umadevi (3) and Others** reported in **(2006) 4 SCC 1** is applicable to labour court and industrial tribunals. Learned counsel for the petitioner further submits that as the respondent-workman is a casual worker, he has no right to be regularised. It is next submitted by learned counsel for the petitioner that learned Industrial Tribunal committed perversity by attributing that MW1 has stated in his cross-examination that the workman was working for 20-25 days with a break of one or two day as the same is incorrect and the workmen working for 20-25 days has come in a suggestion, which was denied by MW1 and learned tribunal has also committed perversity by attributing to the MW2 that he has stated that the respondent workman was closing room of the office in the evening also, though MW2 has categorically stated that the watchman, was doing the job of closing the office in the evening, hence, it is submitted that the award dated 04.11.2009 passed in Reference Case no. 121 of 1994 be quashed and set side.

8. Learned counsel for the respondent, on the other hand, vehemently opposes the prayer of the petitioner and submits that the following facts are undisputed :

(i) that the respondent workman has been continuing with the services of the petitioner till today starting from 22.04.1984

(ii) that there are huge vacancies against the posts as is evident from the Ext. W3.

(iii) that, it is the admitted position that the circular dated 06.05.1987, has been implemented and benefit has been extended to similarly situated persons, which is also evident from the judgment dated 31.07.2019 in WP (L) No. 6918 of 2012 passed by a co-ordinate Bench of this Court.

9. Under such circumstances, it is submitted that the respondent – workman is entitled for regularisation of his services with the petitioner corporation. Drawing attention of the court to the judgment of the Co-ordinate Bench of this Court passed in WP (L) No. 6918 of 2012 dated 31.07.2019, in the case of **Employer in relation to Management of FCI vs. Ram Vilash Paswan and Ors**., it is submitted by learned counsel for the respondent that similarly placed workmen therein, were directed to be reinstated by the Central Government, Industrial Tribunal no. 2 , Dhanbad and said WP (L) No. 6918 of 2012, having been filed to quash the said award passed by the Central Government Industrial Tribunal in Reference Case no. 130 of 1996, has been dismissed by the Co-ordinate Bench vide judgment dated 31.07.2019 and the LPA preferred against the said judgment vide LPA No. 630 of 2019 , has also been dismissed by the Division Bench of this Court. It is next submitted by learned counsel for the respondent that another Co-ordinate Bench of this Court, in **WP (L) No. 4466 of 2016** in the case of **Food Corporation of India vs. Union of India & Ors.** has also dismissed the prayer to quash the award dated 27.08.2015 passed in Reference Case no. 165 of 1997 by the Central Government Industrial Tribunal I, Dhanbad and the LPA No. 582 of 2019, preferred against the said judgment of the Co-ordinate Bench of this Court, has also been dismissed by the Division Bench of this Court hence, it is submitted that this writ petition, being without any merit, be dismissed.

10. Having heard the rival submissions made at the bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that the power of judicial review of award passed by the tribunal in a reference of a High Court under Article 226 of Constitution of India, is limited, as has been held by the Hon'ble Supreme Court of India, in the case of **Syed Yakoob v. K. S. Radhakrishnan and others** reported in **AIR 1964 SC 477,** which has been reiterated by the Hon'ble Supreme Court of India, in the case of **Heinz India (P) Ltd. and Another v. State of Uttar Pradesh and Others** reported in **(2012) 5 SCC 443,** para 66 and 67 of which reads as under :-

> *"66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant "the feel of the expert" by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land. (See Union of India v. S.B. Vohra [(2004) 2 SCC 150 : 2004 SCC (L&S) 363] , Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] and Thansingh Nathmal v. Supdt. of Taxes [AIR 1964 SC 1419] .)*
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> *67. In Dharangadhra Chemical Works Ltd. v. State of Saurashtra [AIR 1957 SC 264] this Court held that decision of a tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case [AIR 1964 SC 1419] where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed."*

11. Hon'ble Supreme Court of India, in the case of **General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others v. Giridhari Sahu and Others** reported in **(2019) 10 SCC 695** , has also reiterated the settled principle of law, that if a finding recorded by the court is erroneous and based upon perversity, such order can be quashed and set aside.

12. So the law is well settled that the power of issuance of writ of *certiorari* by a High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, in the matter of interference of the award passed by a Labour court or a tribunal is very limited and that can only be exercised if any perversity is shown in the award.

13. Now coming to the facts of the case, true it is that there is a some error committed by learned tribunal in referring to the deposition of MW1 and MW2, though MW1 has not stated specifically that the petitioner was working for 20 to 25 days each month, with a break of 1-2 days, but he has stated that the petitioner, was working for 15-25 days in a month and this minor discrepancy in referring to the deposition of MW1 by learned tribunal when the maximum days of employment is same but there is a difference between the minimum days for which, the respondent workman worked in a month, in considered opinion of this court, and in the facts and circumstances of the case, cannot be termed to be perverse or a finding based on no evidence.

14. Similarly, learned tribunal has referred to MW2 having stated that he used to close the room of the office in the evening even though MW2 has stated that the same was closed in the evening by the Watchman but again, this kind of a minor discrepancy cannot be termed as a perversity in the facts and circumstances of the case.

15. It is pertinent to mention here that Hon'ble Supreme Court of India, in the case of **Hari Nandan Prasad and Another v. Employer I/R to Management of Food Corporation of India and Another** reported in **(2014) 7 SCC 190,** para 39 of which reads as under:

> *"39. On a 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 regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned 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 regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision." (Emphasis supplied)*

has laid down the circumstances when regularisation in service, can be directed by the labour court or Industrial Tribunal. Now coming to the facts of this case, as already indicated above, the undisputed facts remains

(i) that the respondent workman has been continuing with the services with the petitioner till today starting from 22.04.1984

(ii) that there are huge vacancies against the posts as is evident from the Ext. W3.

(iii) that, it is the admitted position that the circular dated 06.05.1987, has been implemented and benefit has been extended to similarly placed persons, which is also evident from the judgment dated 31.07.2019 in WP (L) No. 6918 of 2012 passed by a co-ordinate Bench of this Court.

16. Under such circumstances, this court is of the considered view that no perversity has been committed by learned tribunal which no doubt, was having the jurisdiction, in answering such reference, and passing the order of reinstatement.

17. Under such circumstances, this court do not find any justification for interfering with the award dated 04.11.2009 passed in Reference Case no. 121 of 1994.

18. Accordingly, this writ petition, being without, any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 1st February, 2024
Smita /AFR