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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**W.P.(C) 2474/2004**

**Date of decision: 3<sup>rd</sup> March, 2010**

**DELHI JAL BOARD**

..... Petitioner

Through: Mr. Nishakant Pandey, Advocate.

versus

**SHYAM LAL**

..... Respondent

Through: Mr. Anuj Aggarwal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in the Digest?                | Yes |

**RAJIV SAHAI ENDLAW, J.**

1. This writ petition has been preferred by Delhi Jal Board (DJB) with respect to the award dated 9<sup>th</sup> September, 2002 of the Labour Court on the following reference –

“Whether Shri Shyam Lal daily rated/casual/muster roll workman is entitled to be regularized in proper pay scale on the post of beldar and if so, from which date and what directions are necessary in this respect”.

It was the claim of the respondent workman that he joined the employment of Delhi Water Supply & Sewage Disposal Undertaking, being the predecessor of petitioner DJB w.e.f. 2<sup>nd</sup> April, 1984 as *Beldar* and was being treated as a daily rated/casual/muster roll worker and being paid wages as fixed and revised from time to time for unskilled casual workers while his counterparts doing identical work of the same value but being treated as regular employees were being paid their salary in a different pay scale with usual allowances admissible under the rules and enjoying other benefits.

2. The petitioner contested the claim of the workman by pleading that the workman was offered the post of regular *Beldar* but in the meantime an inquiry was started against him of the charge of tampering his date of birth in the school leaving certificate for gaining employment as *Beldar* and therefore the muster roll of the workman was suspended and hence his service could not be regularized. It was the further the plea that the petitioner was

following the phased programme of regularization of muster roll employees.

3. The Labour Court has in the award impugned in this writ petition, in para 10 observed that the workman has been regularized in the service on the post of *Beldar* w.e.f. 01.04.1989 in the proper pay scale and therefore the question whether the workman is entitled to be regularized or not stands answered in the affirmative and the only question which remained to be decided was the date from which the workman was entitled to be regularized. The Labour Court observing that the petitioner had not supplied any reason as to why the workman could not be regularized from the initial date of appointment and relying upon *Ramji Lal Vs. N.I.H. & F.W.* (2002) V AD (Delhi) 872 held the workman entitled to be regularized from the initial date of appointment i.e. 2<sup>nd</sup> April, 1984 in the proper pay scale and allowance of *Beldar*.

4. The award aforesaid was challenged by the petitioner after nearly two years of its publication. Both the counsels inform that in implementation of the award the workman has already been paid the emoluments as if regularized w.e.f. 2<sup>nd</sup> April, 1984 and till November, 2003. Both counsels are also of the view that the workman has not been regularized w.e.f. 1<sup>st</sup> April, 1989 as wrongly deemed in the impugned order. The counsel for the petitioner on enquiry states that the workman continues as a muster roll daily wage employee till date. Though this Court vide order dated 21<sup>st</sup> July, 2005 had stayed the effect and operation of the award but the counsel for the petitioner is unable to explain as to why the workman has been continued as a muster roll daily wage employee thereafter also. It is further informed by the counsels that in the inquiry initiated by the petitioner against the workman, the workman was found guilty and was meted out the punishment of warning on 25<sup>th</sup> February, 1994.

5. The counsel for the petitioner relies upon *Secretary State of Karnataka Vs. Umadevi* (2006) 4 SCC 1 to contend that this court ought not to direct regularization of an employee/workman as the respondent in the present case, whose initial appointment is contrary to the scheme for public employment. However, on inquiry as to what is the scheme of the petitioner for the employment of the *Beldars*, the answer, as also given in the reply to the claim petition before the Labour Court, is that the regularization of *Beldar* is done in a phased manner as per the seniority in the muster roll.

6. What *Umadevi* (supra) lays down is that persons employed in such casual manner should not be given precedence over employment through the prescribed stream. However in the present case, the prescribed stream itself is of first taking *Beldars* on the muster roll and thereafter regularizing them in a phased manner. Thus it cannot be said that the initial

appointment of the workman in the present case is irregular or that he is disentitled for the said reason from being regularized. In fact it is the case of the petitioner itself that the respondent workman was considered for regularization but was not regularized owing to the inquiry which had been commenced against him. The judgment in *Umadevi* would thus not come in the way of the regularization of the respondent workman, if otherwise found entitled to.

7. Per contra, the counsel for the respondent workman has drawn attention to *U.P. State Electricity Board Vs. Pooran Chandra Pandey* (2007) 11 SCC 92, particularly to paras 16 to 18 thereof to contend that the respondent workman in the present case has been discriminated vis a vis the others contemporaneously engaged with him; while the others have been regularized, the petitioner for inexplicable reasons has not been regularized and has since 2<sup>nd</sup> April, 1984 been continued as a daily wage muster roll employee. He has further pointed out that though certain observations in *Pooran Chandra Pandey* (supra) were held to be uncalled for by a subsequent larger bench in *Official Liquidator Vs. Dayanand* (2008) 10 SCC 1, but the law as to discrimination amongst employees as laid down in *Pooran Chandra Pandey* remains. He has also drawn attention to *Bidi, Bidi Leaves' and Tobacco Merchants Association Vs. The State of Bombay* AIR 1962 SC 486 where the constitution bench had laid down the scope of the powers of a Labour Court and to the recent dicta in *Maharashtra State Road Transport Corporation Vs. Casteribe Rajya P. Karmchari Sanghatana* (2009) 8 SCC 556 where it has been reiterated that the powers of the Labour Court are very wide and once an unfair labour practice on the part of the employer is established, the Labour Courts are empowered to issue preventive as well as positive directions to an erring employer and such issues pertaining to unfair labour practice were not referred to or considered in the *Umadevi* case. It is his contention relying upon Item 10 in 5<sup>th</sup> Schedule r/w Section 25 T of the I.D. Act that the practice of continuing the respondent workman since 2<sup>nd</sup> April, 1984 as a daily wage muster roll employee, while others similarly placed as him have been regularized is an unfair labour practice. It is further contended that the case of the respondent workman would not be covered by Section 2 (oo) (bb) of the Act, the work for which the petitioner has been employed, being of a permanent nature as borne out from the continuation in employment of the respondent workman for the last 25 years. He further draws attention to the cross examination of the witness of the petitioner before the Labour Court where it is admitted that the nature of work and working hours of the respondent workman and his counterparts who were treated as regular *Beldars* and paid their salary in the regular pay scale was same and identical.

8. The counsel for the petitioner in rejoinder relies upon *State of Karnataka Vs. Sri G.V. Chandrashekar* (2009) 4 SCC 342, *State of Bihar Vs. Upendra Narayan Singh* (2009) 5 SCC 65 and *C. Balachandran Vs. State of Kerala* (2009) 3 SCC 179 and *State of West Bengal Vs. Banibrata Ghosh* (2009) 3 SCC 250 to contend that *Umadevi* has consistently been followed by the courts. However on enquiry as to whether the facts in any of the said cases were same as that in the present case and as to whether the regular/prescribed stream of employment in these cases also was of phased regularization of employees on the muster roll, the counsel is unable to confirm the same.

9. The petitioner has neither pleaded that the emoluments paid to the respondent workman as a regular employee from 2<sup>nd</sup> April, 1984 till November, 2003 were without prejudice to its rights and contentions nor claimed any relief in this regard in the petition. In fact no averment also in that regard was made in the petition and the said fact was mentioned by the respondent workman only in the counter affidavit.

10. In the aforesaid circumstances, the respondent workman is found entitled to regularization of his employment and to emoluments as of a regular employee. This Court is shocked at his continuance as a daily wage muster roll employee for the last over twenty five years. The same is found contrary to public policy and the law and discriminative against the respondent. The counsel for the petitioner is unable to explain as to why, inspite of finding the respondent /workman guilty in enquiry and meeting out punishment of warning only, the respondent/workman was retained on muster roll only and not regularized. The petitioner apparently is satisfied with the services of the respondent/workman. The explanation of the counsel for the petitioner that the respondent has been continued in service owing to the present litigation is not found convincing, specially after 21<sup>st</sup> July 2005 when the operation of the award was stayed.

11. The question still remains as to from which date the respondent workman is entitled to be regularized. I had put to the counsel for the respondent workman that the regularization cannot be from prior to 25<sup>th</sup> February, 1994 on which date the inquiry earlier initiated by the petitioner against the respondent culminated in only a warning being meted out to the respondent and which has attained finality. The counsel however contends that the contemporaries of the respondent workman were regularized earlier and if the regularization of the workman is ordered from 25<sup>th</sup> February, 1994 or thereafter, it would tantamount to the respondent workman being meted out punishment besides of warning already meted out to him. It is further contended that though the respondent workman has received the emoluments as a regular employee till 2003 but the date of regularization would have a

bearing on his pensionary and other benefits.

12. I am of the opinion that regularization since prior to 25<sup>th</sup> February, 1994 when the inquiry initiated against the workman culminated cannot be directed. The petitioner, on initiation of inquiry did remove the name of the respondent workman from the muster roll; the respondent thus lost the seniority of prior thereto i.e. w.e.f. 2<sup>nd</sup> April, 1984. The respondent/workman then neither challenged his removal from muster roll, nor the inquiry or the findings of the inquiry. The reference of the dispute was in 1996 only. Thus the seniority of the respondent in the muster roll has to be counted from 26<sup>th</sup> February, 1994 only. It has been enquired from the counsel for the petitioner as to with effect from which date the muster roll employees employed w.e.f. 26<sup>th</sup> February, 1994 were regularized. It is informed that generally they are considered for regularization after 720 days of initial appointment. The counsel for the respondent/workman controverts.

13. Accordingly the writ petition is allowed partly. The award is modified to the effect that the respondent workman be regularized treating his initial appointment to be w.e.f. 26<sup>th</sup> February, 1994 instead of from 2<sup>nd</sup> April, 1984. The amount already paid to the respondent/workman in enforcement of the award treating him as a regular employee from 2<sup>nd</sup> April, 1984 to 25<sup>th</sup> February, 1994 be adjusted in the amounts due after November, 2003.

With the aforesaid direction, the petition is disposed of.

No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**3<sup>rd</sup> March, 2010**

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