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

\+ **W.P.(C) 4441/2006 & CM No. 10334/2011**

% Reserved on: 3rd July, 2012
Decided on: 24th September, 2012

THE MANAGEMENT OF C.P.W.D ..... Petitioner
Through Mr. R.V. Sinha, Mr. R.N. Singh, Advs.

versus

RAM SINGH ..... Respondent
Through Mr. Anuj Aggarwal, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present petition arises from the award dated 23rd January, 2004 passed by the Learned Presiding Officer, Central Government, Industrial Tribunal cum Labour Court – II.

2. The award arose from the following reference of the Ministry of Labour sent vide letter dated 18th December, 1990 for adjudication to the Tribunal, "Whether the action of the Management of CPWD New Delhi in not regularizing the service of Shri Ram Singh, Carpenter with effect from 1st January, 1972 is justified? If not, to what relief the workman is entitled to?"

3. The claim of the Respondent before the Tribunal was that he has been in employment of the Petitioner since 1st January, 1972 as a carpenter with an unblemished and uninterrupted record of service. He was being paid

wages as fixed and revised from time to time under the Minimum Wages Act and his services had not been regularized in proper pay-scale and allowances. The Respondent challenged the non-regularization of service and payment of lesser remuneration as "an unfair labour practice" as provided in Section 2 (ra) read with Clause 10 of the Vth Schedule of the Industrial Disputes Act, 1947 (in short 'I.D. Act'), amounting to sheer exploitation of labour was violative of Article 14, 16 & 39(d) of the Constitution of India and contrary to the law laid down by the Hon'ble Supreme Court in a catena of decisions.

4. The Petitioner while responding to the reference denied that there was a regular post with the Respondent and that the Respondent herein had been denied the appointment thereon and he thus could not be regularized. It was denied that there was violation of any provision of the I.D. Act or the Schedule annexed thereto.

5. After hearing learned counsel for the parties, Learned Industrial Tribunal came to the conclusion that as the Respondent was working as a carpenter for a very long time and though he did not pass the trade test, the qualification should be relaxed and he should be regularized. It was held that in case the Respondent was not regularized, it would amount to unfair labour practice which is prohibited under the I.D. Act. Thus, the Respondent was directed to be regularized with effect from the date of reference to the Tribunal i.e. 14th December, 1990 and in view of the fact that he had not passed the test, he was not entitled to full back wages but 50% back wages only.

6. Learned counsel for the Petitioner contends that the order passed by the Learned Industrial Tribunal is contrary to the law laid down by the Constitution Bench in *State of Karnataka and Ors. Vs. Uma Devi and Ors. (2006) 4 SCC 1*. Reliance is further placed on *Official Liquidator Vs. Dayanand and Ors. (2008) 10 SCC 1* wherein the decision in *Bhagwati Prasad Vs. Delhi State* (1990) 1 SCC 361 has been overruled by the Hon'ble Supreme Court. It is further contended that neither there is any unfair trade practice nor there is any reference before the Tribunal regarding the unfair trade practice and the said issue having not been framed and adjudicated upon by the competent authority, this plea cannot be taken up at this stage before this Court. Relying on *Gangadhar Pillai Vs. Seaman (2001) 7 SCC 533* it is contended that merely because someone works for number of years, his non-regularization would not amount to unfair practice. The powers of the Industrial Tribunal are wide enough to the extent that it can pass any award, and it can even amend the terms of contract between the parties. It is next contended that in a conflict between the decisions of two coordinate Benches of the Hon'ble Supreme Court the earlier decision would prevail and the later decision would be held per-incurium in view of the fact that it did not consider the earlier decision. Thus, the impugned award be set aside as no directions can be given to the Petitioner to regularize the Respondent much less any direction retrospectively.

7. Learned counsel for the Respondent on the other hand contends that the decision in *Uma Devi* (supra) has no application to a case tried by the Industrial Tribunal. Relying on *Maharashtra State Road Transport Corporation and Anr. Vs. Casteribe Rajya P. Karmchari Sanghatana (2009)*

8 SCC 556 it is contended that the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Trade Labour Practices Act, 1971 (in short 'MRTU & PULP Act') and the Industrial Tribunal Act are similar to the provisions of the Industrial Disputes Act. While dealing with MRTU and PULP Act, the Hon'ble Supreme Court held that the power given to the Industrial and Labour Courts under Section 30 is very wide and 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 status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Relying upon the *Management of MCD Vs. Delhi Administration and Ors.* W.P.(C) No. 2521/1988 decided on 20th April, 2010 it is contended that the power of labour Court is wider and it can go beyond the contract altering, modifying or incorporating therein the contents of the award as well. Further the scope of interference by this Court in a petition under Article 226 of the Constitution of India is limited and this Court will not sit as a Court of appeal over the decision of the Industrial Tribunal. Relying on *Harjinder Singh Vs. Punjab State Warehousing Corporation (2010) 3 SCC 192* it is stated that the finding of facts arrived at by the Industrial Tribunal cannot be set aside by the High Court unless they are manifestly perverse and illegal. The Respondent has been working for the last 40 years. Further the writ petition is liable to be dismissed on the ground that the Petitioner has preferred the writ petition after nearly two years of the date of the award. The plea that there is no post available has not been pleaded in the writ petition and hence cannot be now raised during the course of arguments. Reliance is placed on *Management of CPWD Vs. Har*

Lal MANU/DE/1602/2011 to contend that even in the reference if the expression unfair labour practice is exactly not stated it can be inferred from the reference and the award as well. Hence, the writ petition be dismissed being devoid of merit.

8. I have heard learned counsel for the parties. Indubitably as canvassed by the learned counsel for the Respondent the scope of interference in a writ of certiorari under Article 226 of the Constitution of India is limited as held by the Hon'ble Supreme Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation*. It was held:

> **"**10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution — *Syed Yakoob* v. *K.S. Radhakrishnan* [AIR 1964 SC 477] and *Surya Dev Rai* v. *Ram Chander Rai* [(2003) 6 SCC 675] . In *Syed Yakoob case* [AIR 1964 SC 477] , this Court delineated the scope of the writ of certiorari in the following words: (AIR pp. 479-80, paras 7-8)
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> " The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is

opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] , *Nagendra Nath Bora* v. *Commr. of Hills Division* [AIR 1958 SC 398 : 1958 SCR 1240] and *Kaushalya Devi* v. *Bachittar Singh* [AIR 1960 SC 1168]).

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or

> tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

9. Examining the facts of the case within the parameters laid down by the Hon'ble Supreme Court in *Harjinder Singh* (supra) it would be seen that the impugned award is contrary to the law laid down by the Constitution Bench in *Uma Devi* (supra) and thus an error of law is apparent on the face of record. In *Uma Devi* (supra) their Lordships while dealing with regularization held that even if a person has worked for considerable length of time, the same does not entitle him to jettison the Constitutional scheme

of appointment and the fact that in certain cases the Court has directed regularization of employees involved in those cases cannot be made use of to base a claim on legitimate expectations. It was held:

> **"**45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in

the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *Dharwad* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] , *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] , *Jacob* [*Jacob M. Puthuparambil* v. *Kerala Water Authority*, (1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] and *Gujarat Agricultural University* [*Gujarat Agricultural University* v. *Rathod Labhu Bechar*, (2001) 3 SCC 574 : 2001 SCC (L&S) 613] and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (*i*) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (*ii*) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in *Council for Civil Services Union* v. *Minister of Civil Service* [1985 AC 374

: (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] , *National Buildings Construction Corpn.* v. *S. Raghunathan* [(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] and *Chanchal Goyal (Dr.)* v. *State of Rajasthan* [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] .] There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after *Dharwad decision* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] . Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

10. In *Official Liquidator Vs. Dayanand and Ors.*, a judgment rendered by a three judge Bench of the Hon'ble Supreme Court, while dealing with the cases of ad-hoc/temporary/daily wage/ casual employees it was reiterated that by virtue of Article 141 of the Constitution of India the decision in *Uma*

Devi is still a binding precedent on all Courts including the Supreme Court till the same is overruled by a larger Bench. It was held that in exercise of power vested under Article 226 of the Constitution of India the High Court cannot issue a mandamus and compel the States and its instrumentalities/ agencies to regularize the services of temporary/ ad-hoc/ daily wages/ casual/ contract employees and directions cannot be issued to the public employer to prescribe and give similar pay-scales to employees appointed through different modes with different conditions of service and different sources of payment.

11. Learned counsel for the Respondent relying upon the *Marashtra State Road Transport Corporation* (supra) has strenuously contended that the decision of the Constitution Bench in *Uma Devi* (supra) has no application to the redressal of grievance of unfair labour practice before an Industrial Tribunal. In *Maharashtra State* (supra) the Hon'ble Supreme Court was considering Section 26 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (in short MRTU and PULP Act). Their Lordships held that the power given to the Industrial and Labour Courts under Section 30 of the MRTU and PULP Act is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlies, casuals and 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 the Schedule IV, and once such unfair labour practice on the part of the labour is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive directions to an

erring employer. It was also held that the provisions of MRTU and PULP Act and the power of Industrial and Labour Courts provided therein were not at all under consideration in the case of *Uma Devi* (supra).

12. The Hon'ble Supreme Court in *Maharashtra State Road Transport Corporation* (supra) held:

> "30. 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 (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] ? In our judgment, it is not.
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> 31. The purpose and object of the MRTU and PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedules II, III and IV. The MRTU and PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being engaged in by that person and direct such person 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.
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> 32. 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.

33. 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 (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] . 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 (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] . *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.

34. It is true that *Dharwad Distt. PWD Literate Daily Wages Employees' Assn*. [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902] arising out of industrial adjudication has been considered in *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] leaves no manner of doubt that what this Court was concerned in *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularisation and conferring them status of permanency have been passed.

35.*Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is an authoritative pronouncement for the proposition that the

> Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.
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> 36.*Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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 (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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."

13. As noted above in *Maharashtra State Road Transport Corporation* (supra) while dealing with Section 30 read with Section 32 of the MRTU and PULP Act it was held that *Uma Devi* did 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 workers who have been victim 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 exists. Section 30 & 32 of the MRTU and PULP Act are reproduced as under:

> "30. POWERS OF INDUSTRIAL AND LABOUR COURTS. -
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> (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 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 recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all of any or its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of -

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;
(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceedings before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.

32. POWER OF COURT TO DECIDE ALL CONNECTED MATTERS. -

Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act."

14. Section 30 & 32 of the MRTU and PULP Act provide wide powers to the Industrial Tribunal unlike an Industrial Tribunal under the ID Act. In *Bidi, Bidi Leaves and Tobacco Merchants Association Vs. The State of Bombay (1962) Supp. SCR 381* it was held that the industrial adjudication under the provision of the ID Act is given wide power and jurisdiction to make appropriate awards in determining industrial disputes, however it does not mean that the industrial adjudicator can pass directions contrary to the law. The two provisions dealing with unfair labour practice under the ID Act are Sections 25(t) and 25(u) which prohibit unfair labour practice and provide penalty for the commission thereof. Unfair labour practices are provided under the Vth Schedule. No doubt Clause 10 of the Vth Schedule of the ID Act provides that employing badlis, casuals, 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, however the further issue before this Court would be that in a case where the workman does not sit in trade test, can the management be said to be resorting to unfair labour practice. In the case in hand the Respondent was provided ample opportunity and he was called for the trade test wherein he did not qualify. On the next occasion he did not appear for the trade test. The Respondent has been working on this post for almost 40 years now. In view of the fact that the Petitioner has made efforts to regularize the Respondent and called him for the trade test which he did not qualify, the Petitioner cannot be said to have adopted unfair labour practice. Even in *Maharashtra State Road Transport Corporation* (supra) it was held that *Uma Devi (2006) 4 SCC 1* is an authoritative pronouncement for the proposition tha the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contracted, casual, daily wage or adhoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

15. Learned counsel for the Respondent also relies upon a decision of this Court in Management of *MCD Vs. Delhi Administration & Ors. MANU/DE/0835/2010* wherein this Court relying upon the decision in *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation (1990) 1 SCC 361* held that since the Petitioners had worked on the post for several years they had gained sufficient experience in the actual discharge of duties attached to the post and the practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability.

The decision in *Bhagwati Prasad* (supra) has been overruled by the Hon'ble Supreme Court in *Official Liquidator* (supra). Thus, the reliance on *MCD v. Delhi Administration & Ors. (supra)* is misconceived.

16. In view of *Uma Devi* the award of the learned Tribunal directing regularization and 50% back wages despite the Respondent having not qualified the trade test is set aside. However, the Petitioner will give one more opportunity to the Respondent by conducting a trade test for the Respondent and in case he qualifies the same, he would be regularized on the vacancy as and when available.

17. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 24, 2012
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