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

% **Reserved on: 23rd July, 2024**
Pronounced on: 16th October, 2024

\+ W.P.(C) 4770/2007 & CM APPL. 13972/2017

PUNJAB NATIONAL BANK .....Petitioner

Through: Mr. Swarnil Dey, Advocate

versus

MANOJ KUMAR .....Respondent

Through: Mr. Barun Kumar Sinha and Mrs. Pratibha Sinha and Mr. Sneh Vardhan, Advocates

\+ W.P.(C) 5770/2007 & CM APPL. 14607/2010 & CM APPL. 19703/2010

MANOJ KUMAR .....Petitioner

Through: Mr. Barun Kumar Sinha and Mrs. Pratibha Sinha and Mr. Sneh Vardhan, Advocates

versus

SR.REGIONAL MANAGER PUNJAB NATIONAL BANK .....Respondent

Through: Mr. Swarnil Dey, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petitions under Article 226 read with Article 227 of the Constitution of India ("Constitution" hereinafter) has been filed by the respective petitioners challenging the award dated 14th February, 2007 ("impugned award" hereinafter) passed by the learned Presiding Officer,

Central Government Industrial Tribunal-cum-Labour Court in Industrial Dispute bearing ID No. 158/1999.

FACTUAL MATRIX

2. Sh. Manoj Kumar ("the workman" hereinafter) was engaged *vide* Regional Office Letter no. RMD/STAFF/IR dated 15th October, 1993 on an *ad-hoc* basis as a 'sweeper' in the Punjab National Bank ("PNB" hereinafter), from 30th September, 1993 till 31st December, 1997.

3. Thereafter, the branch manager of the PNB terminated the services of the workman w.e.f. 22nd January, 1998, subsequent to which, the workman wrote a letter dated 23rd January, 1998 to the Chief Manager, PNB for allowing him to continue working in the aforesaid branch.

4. Aggrieved by the aforesaid circumstances, the workman raised an industrial dispute bearing ID No. 158/1999, before the learned Tribunal, seeking reinstatement of his services along with full back wages w.e.f. 22nd January, 1998 as he was wrongfully terminated without issuance of a notice of termination as mandated under Section 25F of the Industrial Disputes Act, 1947 ("ID Act" hereinafter).

5. Subsequently, the PNB raised an objection to the aforesaid industrial dispute, alleging that the same is not an industrial dispute in terms of Section 2(k) of the ID Act as the applicant therein is not a workman as per Section 2(s) of the ID Act. Further, it was contested that the workman was not appointed by PNB, therefore, no employer-employee relationship exists between the parties.

6. In view of the aforesaid submissions, the learned Tribunal framed issues surrounding the dispute and consequently passed the impugned

award by holding that the said termination was illegal and the workman is entitled to be reinstated with full back wages w.e.f. 22nd January, 1998. However, the learned Tribunal found no force in the claim of the workman seeking relief of regularization and thus, the same was decided in favour of PNB.

7. Aggrieved by the grant of relief of reinstatement with full back wages, PNB has filed the writ petition bearing WP(C) No. 4770/2007, seeking setting aside of the impugned award, whereas, the workman is challenging the same in writ petition bearing WP(C) No. 5770/2007, to the extent that the findings of the learned Tribunal *qua* denying regularization to the workman may be set aside.

8. For proper adjudication of captioned petitions, this Court finds it apposite to deal with the issues of law raised herein vide a common judgment.

PLEADINGS BEFORE THIS COURT

9. The PNB has filed the instant writ petition bearing WP(C) No. 4770/2007 on the following grounds:

> *"1) Because the award passed by the Presiding Officer Industrial Tribunal cum Labour Court dated 14.2.2007 directing reinstatement & full back wages is illegal and contrary to the constitution bench decision of the Hon'ble Supreme Court in the case reported as State of Karnataka vs. Uma Devi, (2006) 4 SCC 1.*
> *II) Because the findings & conclusions recorded by the Presiding Officer, Industrial Tribunal cum Labour Court it is contradictory inasmuch on the one hand he has recorded that there is no material on record to show that the workman was appointed in accordance with due process and procedure of application and on the other hand the order of*

removal has been set aside and the workman has been reinstated with full backwages.

III) Because the issue as to whether the decision in the case of Uma Devi would also apply to cases arising under the Industrial Disputes Act has also been settled by a recent decision of the Hon'ble Supreme Court in the case of U.P Power Corporation Ltd. & Anr. Vs. Bijli Mazdoor Sangh & Ors. Reported in 2007(5)Scale 732 wherein it has been clearly held that the principle would be equally applicable to cases arising under the Industrial Disputes Act.

IV) Because it is an admitted fact that no appointment letter was ever issued to the workman under para 495 of Shastri award.

V) Because it is an admitted position that the appointment of the respondent was as a stop gap arrangement to the post of Safal Karamchari.

VI) Because as per the provision of Para 16.9 of Desai award, persons engaged on casual basis are also excluded from operation of the award which governs the service condition as applicable to the employees in the banking industry.

VII) Because the recent decisions of the Hon'ble Apex Court have clarified that mere fact that there is violations of provision of Section 25 (F) of the Industrial Disputes Act would not automatically entitle the adhoc casual worker to reinstatement with full back wages."

10. Grounds of the workman in writ petition bearing WP(C) No. 5770/2007 along with the written submissions of the workman are reproduced as follows:

"A. Because the Petitioner became eligible for regularization, the Bank has not issued appointment letter no educational qualification is required and Safai Karamchari was not called from employment exchange. There is no irregularity in his appointment in the Bank. All other Safai

Karamchari are also appointed in the Bank as the same pattern as the Petitioner appointed.

B. Because the Petitioner was working without any break that the respondents did not give him any leave whereas as per banks rules - he was entitled to get casual leave as well as medical aid etc. That the respondents without assigning any reason and without giving any notice terminated his service from 22.01.1998.

C. Because that the Petitioner wrote a letter dated 23.01.1998 to the respondents that he had been working since 30.09.1993 without any break so he be allowed to continue working in the branch. A copy of letter-dated 23.01.1998 is annexed herewith as ANNEXURE P-7.

D. Because the Tribunal has erred in its finding that as per ratio of Uma Devi case the regularization is not permitted as his appointment is not in accordance with law. However the said Judgment provides for a scheme to consider regularization as on time measure. Therefore the fmding qua regularization is bad in law.

E. Because there is nothing on record to suggest that the appointment of these petitioner is either irregular or illegal. Rather the petitioner has been taken on roll as per existing policy and practice prevalent in the bank, therefore the finding of the tribunal is bad in law.

F. Because the petitioner was removed on 22-01-98 and in his place one Ms. Meena was appointed on temporary basis from February 1998 till April, 2007and therefore he has also been removed. Thus, it is crystal clear that the petitioner has been discriminated and the same is violation of Article 14 of the constitution."

(written submissions on behalf of the workman)

"1. THAT THE PETITIONER IS ELIGIBLE FOR REGULARIZATION TO THE POST OF SWEEPER IN RESPONDENT BANK

It is submitted that the Respondent Bank has issued Circular dated 07.11.1988 for appointment of part time and

full time Sweepers as well as maintenance of rosters (Page no.6 of Additional Affidavit filed by petitioner along with CM No.19703 of 2010).

A perusal of Circular dated 07.11.1988 for appointment of part time / full time sweepers, Regional Manager is the competent authority and minimum eligibility criteria pertaining to educational qualification i.e. Class -4. The Petitioner fulfils the eligibility criteria and therefore, he was appointed under the orders of the Regional Manager, Delhi Region. In this connection reference may be made to letter dated 15.10.1993 issued by Regional Manager, Punjab National Bank to the Chief Personal, Personal Division, Head Officer, New Delhi (Page No.31, Annexure P-3). Therefore, the appointment of the petitioner is as per recruitment policy of the bank. Therefore, his appointment cannot be treated as back door entry. He is entitled to regularization as sweeper.

2. THE BANK HAS REGULARIZED THE JUNIORS TO THE PETITIONER AS SWEEPER IN THE BANK

It is submitted that the two juniors to the Petitioner who were similarly situated, have been regularized by the bank. In the list of seniority one Smt. Meena has been regularized. In this connection reference may be made to Letter dated 12.03.2007 issued to Zonal Manager of the Bank by the Chief Manager (Page -14, Annexure P12 of CM No.19703/2010)

That apart one Sh. Ajay Kumar has been regularized in the year 2015. (Kindly refer Page 19, Annexure P-3 in CM No.13972/2017 in WP (C) No.4770/2007). It is further submitted that Ajay Kumar had succeeded before LD CGIT, Delhi and the Bank had challenged the said Award before this Hon'ble Court vide WP No.6166/2008, PNB Vs Ajay Kumar. However, the Bank has withdraw the Writ Petition

No.6166 /2008 and has regularized the service of Ajay Kumar as sweeper.

Another part time sweeper namely Vinod Kumar has also been regularized who is junior to the Petitioner. In this connection reference may be made to letter dated 03.12.2015 of the PNB Workers Organization to the General Manager , HRD (Page No.8, Annexure P-1 to CM No.13972/2017 in WP No.4770/2007).

*3. **BANK DISCRIMINATES THE PETITIONER***

Since, the juniors has been regularized as sweeper by the Bank and Petitioner has been left out. This approach of the Bank is discriminate and violative of Article 14 of the Constitution of India.

*4. **THERE ARE VACANCIES AVAILABLE TO THE POST OF SWEEPERS***

It is submitted that there are about 72 posts available in the bank for the posts of sweepers. Against those vacancies, juniors to the petitioner has been regularized, therefore, Petitioner can be regularized against those vacancies. (kindly refer Page -11 of Additional affidavit in CM No.19703/2010)"

11. The PNB has refuted the aforesaid contentions of the workman in their Written Submissions, which has been reproduced herein below:

"*RE: NO AUTOMATIC REINSTATEMENT OF AD-HOC WORKER*

*3. The Respondent Worker was 'engaged' orally as a safai karmchari purely on **a stopgap arrangement on an ad-hoc basis** at the Bank's branch **without any formal appointment letter**. He was never appointed to the services. This is because his engagement did not result from any formal recruitment notice advertisement by the Bank. He was engaged by the then Branch-Manager, as the previous*

regular employee/safai karmchari was promoted to peon. Hence, to immediately attend the cleaning activities of the Bank's branch-premises the Respondent Worker was engaged on stopgap basis, until the Bank formally deputed its regular employee.

4. When Petitioner Bank deputed its regular employee (Sh. Suresh Kumar), as per proper/formal procedure, the Respondent Worker was disengaged. Worker challenged his disengagement as illegal termination stating no prior notice or compensation was given. The Ld. Tribunal despite finding that the Worker was not appointed through due process and proper procedure of appointment, granted automatic reinstatement with back-wages citing violation of Section 25-F of the ID Act.

5. Respondent Worker's disengagement is not same as illegal termination under Section 25-F of ID Act. It is most humbly submitted that when there was no formal appointment, there could be no formal termination.
6. Without prejudice to the above submissions, even if such disengagement is equated to illegal retrenchment under Section 25-F of ID Act, then it is a settled law that the scope of relief is only compensation; and not automatic reinstatement.
xxxxx

14. It is a well settled proposition that merely by the timeline of work one cannot seek regularisation to a public post. Such law has been fortified by the Hon'ble Supreme Court in ***Secretary State of Karnataka and Ors. v. Uma Devi*** *[(2006) 4 SCC 1]. Ld. Tribunal in its Award dt. 14.02.2007 has correctly applied this ratio and juxtaposed this with its finding that there was no formal appointment.*

Worker's fresh case for regularisation is beyond original scope

15. Respondent Worker now seeks this Hon'ble Court's intervention in his W.P (C) 5770/2007 to compel the Bank to regularise him by framing a scheme. It is submitted that such plea is a misreading of Para 53 in Uma Devi (supra). It exceeds and diverges form the original scope of the reference.

*16. While originally the Worker sought regularisation before Ld. Tribunal based on work-timeline, but in his petition prays for framing a scheme. Framing a scheme for regularisation and considering him under it was not the original dispute. Without prejudice, Para 53 in Uma Devi, suggesting absorption as a one-time measure, is also inapplicable as the Worker lacks 10 years of service. In fact, Uma Devi (supra) at **Para 37** held no such directions can be issued for framing a scheme.*

Arguments before Tribunal	*Arguments in W.P (C) 5770/2007*
Sought regularisation basis timeline of work.	*Now newly seeks regularisation under a Scheme, with reconsideration of facts.*

*17. Rather the Hon'ble Court in Uma Devi (supra) emphasized that consistent with the Constitutional scheme, public employment requires compliance with rules and fair competition. Unless an appointment follows the due process of selection, appointee has no claim. A daily-wage/casual engagement comes to an end when discontinued. Thus, **Para 43 and Para 45** of the judgment are relied upon here by reference (and other relevant paras in the compilation).*

*18. The Hon'ble Court (at **Para 33**) reasoned that while the State may need to engage ad-hoc workers without following due procedure in certain exigencies, but this does not mean a right of regularization. That public post has to be ultimately filled by a regularly selected employee. Appointments to public posts must follow proper procedures. Similarly, in this case, the Respondent Worker was disengaged and a regular employee was appointed in accordance with due procedure, and not by another ad-hoc worker."*

SUBMISSIONS

(on behalf of the PNB)

12. Learned counsel appearing on behalf of the PNB submitted that the impugned award is liable to be set aside as the same has been passed without application of judicial mind and is thus, contrary to the settled position of law.

13. It is submitted that the learned Tribunal erred in reinstating the workman despite observing it in its award that there is no material on record which reflects that the workman was appointed in accordance with the due procedure of appointment.

14. It is further submitted that there are sufficient materials available on record to show that the workman was merely appointed as a 'stop gap arrangement' as no formal appointment letter was ever issued to him as required under paragraph no. 495 of the Shastri Award which governs the service conditions of bank employees.

15. Learned counsel for the PNB also placed reliance upon the judgment passed by the Constitution Bench of the Hon'ble Supreme

Court in ***State of Karnataka vs. Uma Devi***[1]**,** and submitted that the finding of the learned Tribunal of reinstatement of the workman with full back wages is contrary to the aforesaid judgment.

16. It is further submitted that as per the provisions of paragraph no. 16.9 of the Desai Award, a workman engaged on casual basis are excluded from the ambit of the said award which governs the service conditions as applicable to the bank employees.

17. It is submitted that the learned Tribunal failed to appreciate the settled position of law as per which mere violation of Section 25F of the ID Act does not automatically entitle the *ad-hoc* workman to be reinstated with full back wages. Furthermore, the learned counsel submitted that there was no illegal termination in view of the fact that there was no formal appointment of the workman and he was merely appointed on casual/stop gap basis.

18. In support of the aforementioned submission, the learned counsel for PNB further placed reliance upon the judgments of ***Jagbir Singh v. Haryana State Agriculture Marketing Board And Anr***[2]**, *Aiims v. Ashok Kumar***[3]**,** and ***BSNL v. Bhurmal***[4]and submitted that the finding of the impugned award pertaining to the reinstatement is in contravention to the settled position of law with regard to the fact that the violation of Section 25F of the ID Act would only entitle the workman to be compensated and not the relief of reinstatement with full back wages.

---

[1] **(2006) 4 SCC 1**
[2] **(2009) 15 SCC 327**
[3] **2024 SCC OnLine Del 3286**
[4] **(2014) 7 SCC 177**

19. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the PNB prayed that its writ petition may be allowed and the reliefs be granted, as prayed.

(on behalf of the workman)

20. *Per Contra,* the learned counsel appearing on behalf of the workman vehemently opposed the writ petition filed on behalf of the PNB and submitted that the learned Tribunal rightly reinstated the workman with full back wages in accordance with the law and there is no illegality of any kind thereto, however, the learned Tribunal failed to appreciate that the workman is also entitled to regularization of his services.

21. Learned counsel for the workman submitted that the instant writ petition has been filed on behalf of the workman assailing the finding of the impugned award *qua* the denial of regularization of services of the workman.

22. It is submitted that the workman is eligible for regularization in view of the fact that there is no irregularity in his appointment and all the other sweepers on the same footing, were also appointed in the same manner as the workman herein.

23. It is submitted that the learned Tribunal failed in appreciating the fact that the workman was working without taking any leaves whereas he was entitled to get casual as well as medical leaves as per the Bank rules.

24. It is submitted that the action of the PNB was arbitrary as the workman was wrongfully terminated from his services without assigning proper reasons and without issuing any notice of termination, therefore, in the interest of justice, he is entitled to be regularized.

25. It is submitted that the learned Tribunal further failed in appreciating the law laid down by the Hon'ble Supreme Court in ***Uma Devi (Supra)*** as the same categorically held that regularization must be considered as a one-time measure.

26. It is further submitted that the approach of the PNB in not regularizing the services of the workman is violative of Article 14 of the Constitution of India as the PNB has duly regularized the services of two juniors who were similarly situated as him. Hence, the termination of the workman is discriminatory in nature.

27. It is submitted that the workman was appointed in accordance with the recruitment policy of the PNB and the PNB has purposely concealed the relevant document, i.e., a circular dated 7th November, 1988, which was issued for appointment of part-time and full-time sweepers, and thus, the workman was appointed under the orders of the Regional Manager of the PNB, Delhi Region. Therefore, it is submitted that his appointment cannot be treated as a back door entry and the workman is entitled for regularization of his services.

28. It is further submitted that it is wrong to say that he cannot be regularized in absence of any sanctioned post as there are about 72 vacancies for the said post in the PNB, for which, services of many other juniors have already been regularized.

29. It is also submitted that his removal from the service was illegal and violative of the terms mentioned under the provisions of Section 25F of the ID Act as he was not issued a prior notice of termination.

30. It is submitted that in view of the same, the petition filed on behalf of the PNB is liable to be dismissed as the learned Tribunal rightly reinstated the workman with full back wages.

31. Therefore, in light of the foregoing submissions, it is prayed that the writ petition filed on behalf of the workman may be allowed and accordingly his services may be regularized. It is further prayed that the writ petition filed by the PNB may be dismissed being devoid of any merits.

32. In rejoinder, the learned counsel appearing on behalf of the PNB refuted the above stated submissions of the workman and submitted that the petition filed on behalf of the workman is liable to be dismissed being bereft of any merits as he is not entitled to the relief of regularization merely on the strength of his work tenure.

33. It is submitted that the learned Tribunal has rightly denied the said relief in terms of the principle settled in the judgment of ***Uma Devi (Supra)*** as the scheme of one-time measure is also inapplicable in the workman's case.

34. Therefore, in light of the aforesaid, it is submitted that the petition filed by the workman may be dismissed as the same is devoid of any merit.

ANALYSIS AND FINDINGS

35. Heard the learned counsel for the parties and perused the material placed on record.

36. It is the case of the PNB that the findings of the learned Tribunal in the impugned award, wherein, the workman was reinstated with full back wages is in contravention to the law settled by the Hon'ble Supreme

Court in the judgment of ***Uma Devi (Supra)*** as he was only engaged as a stop gap arrangement on the post of a temporary sweeper and no formal appointment letter was issued to him.

37. It has also been argued on behalf of the PNB that the aforesaid relief of reinstatement has been granted by the learned Tribunal to the workman despite observing the fact that there is no material on record to show that he was appointed in accordance with the established procedure and therefore, the said finding of the learned Tribunal is contrary to its observation.

38. In rival submissions, the workman is aggrieved by the finding of the learned Tribunal *qua* denial of regularization of his services and thus, it has been argued that interference of this Court is warranted with respect to the same in view of the fact that the workman was taken on roll as per the existing policy and prevalent practice of the PNB. Furthermore, the learned counsel appearing on behalf of the workman refuted the contentions of the PNB with respect to the relief of reinstatement of full back wages and submitted that the same was granted on the basis of the relevant material available on the learned Tribunal's record and there is no error of law thereto.

39. In view of the submissions advanced on behalf of the parties, this Court deems it apposite to adjudicate the instant writ petitions conjointly by framing the following issues:

> ***a) Whether workman is entitled to the relief of reinstatement with full back wages as awarded by the learned Tribunal?***

b) Whether the learned Tribunal erred by denying the workman the relief of regularization of his services?

40. Before delving into the merits of the instant case, this Court finds it pertinent to state the scope of interference of this Court under Article 226/227 of the Constitution to interfere with the orders/awards passed by Tribunals. The scope of interference with the findings of a Labour Court under Article 226 of the Constitution of India is to the extent that the High Courts need not reconsider the factual findings of the Court below unless the same is full of conjectures and surmises, and has been erroneously decided, without stating due reasons or corroborating by legal evidence.

41. Summarily stated, it is trite to note that in exercise of power under Article 226 of the Constitution, the High Court does not sit in appeal and therefore, cannot go into the disputed question of facts. Further, it is clear that generally, a petition under Article 226 of the Constitution is maintainable in cases of violation of Fundamental Rights and/or principles of natural justice. Further, the interference of the High Court is warranted where an order or proceeding has been carried out without jurisdiction or in *vires* of a particular statute, therefore, this Court is of the view that intervention may be generally avoided unless it is *prima facie* visible that there is a gross abuse of power and the petition discloses extremely serious allegations which merits intervention.

42. The aforesaid principle has been enunciated in the judgment of the Hon'ble Supreme Court in ***K.V.S. Ram v. Bangalore Metropolitan***

Transport Corpn.*[5]*, wherein, the Hon'ble Court held that upon establishment of the fact that the Labour Court judicially applied its discretion *qua* its findings, the same shall not be interfered with as doing so will nullify the purpose of the forums below which have been specifically established to adjudicate upon the matters.

43. Therefore, it is clear that the power to appreciate the evidence and accordingly decide the merits of the facts of a case lies with the Court below and a Writ Court does not sit in appeal over such factual findings unless the same is found to be perverse, thereby, warranting interference of the High Court.

44. In view of the above, this Court shall now analyze the findings of the learned Tribunal in the impugned award. The relevant paragraphs of the impugned award are reproduced below:

> *"8. Admittedly the workman claimant Shri Manoj Kumar worked as temporary safal karamchari w.e.f. 30.9.93 till 31.12.96. He worked for 1553 days continuously. He was taken in service vide regional office letter on 15.10.93. He was given a chance to work in place of Ravinder Singh Sweeper who was promoted as Peon. According to the management he was working in stop gap arrangement vacancy. There is only one post. He was not engaged through due procedure i.e. by interview. However, the claim of the management that the claimant worked by way of stop gap arrangement is not borne out i.e. supported from the statement of management witness Shri G.K.Garg MW1. There is nothing on record as to who was working on the vacancy against which the workman has worked for 1553 days . However, it is proved that the workman has worked for 1553 days continuously and he has not been given any notice or notice pay. His disengagement is in violation of*

[5] **(2015) 12 SCC 39**

section 25 F of the I.D.Act. It is thus evident that the workman's removal is in violation of the principles of natural justice. The workman has also claimed regularization. His claim that he has worked for 1553 days is not sufficient to prove that he is entitled to regularization in the absence of existence of any regular post of Safal Karamchari in the bank and mere working for 1553 days does- not entitle him to be regularized in the post/job.

9. There is nothing on record to show that the workman has been engaged or appointed in accordance with the due process and procedure of appointment, therefore, he is not entitled to the relief of regularization in view of the decision captioned as Secretary of State of Karnataka Vs. Uma Devi reported in JT(4)2006. However, his removal is illegal and he is entitled to reinstatement and full back wages w.e.f. 22.1.98 till he is reinstated. Therefore, he be reinstated with back wages w.e.f. 22.1.91 Award is passed accordingly. File be consigned to record room."

45. From a bare reading of the above excerpts, it is transpired that *vide* a regional office letter dated 15th October, 1993, the workman was engaged in services as a sweeper in place of another workman namely Sh. Ravinder Singh who got promoted as a peon. It is further made out that the workman worked for a continuous period of 1553 days pursuant to which his services were disengaged by the PNB without issuing any notice of termination to him. In view of the same, the learned Tribunal held that the termination of his services was illegal, being violative of Section 25F of the ID Act and thus, it was directed that the workman be reinstated with full back wages w.e.f. 22nd January, 1998.

46. On the aspect of claim of regularization of the workman's services, the learned Tribunal categorically held that his period of tenure, i.e., 1553

days of work, is not sufficient in order to prove that he is entitled for regularization of his services, in view of the fact that there is absence of a regular post of a sweeper in the Bank. Moreover, the learned Tribunal held that there is nothing on record to show that his services were engaged by following the due process of selection. Therefore, in light of the law laid down in ***Uma Devi (Supra),*** the workman was denied the relief of regularization.

47. Now this Court shall delve into the merits of the instant petition.

ISSUE (a)- Whether workman is entitled to the relief of reinstatement with full back wages as awarded by the learned Tribunal?

48. One of the primary contentions made on behalf of the PNB is that the learned Tribunal erroneously reinstated the workman with full back wages as the said finding and conclusion is illegal and in contravention to the decision of the Hon'ble Supreme Court passed in the judgment of ***Uma Devi (Supra)***. It has also been contended that the aforesaid finding is contrary to the undisputed fact that the workman was irregularly appointed.

49. In rival submissions, the learned counsel for the workman contended that he was illegally terminated which is against the provisions of Section 25F of the ID Act, and thus, in the interest of justice, the learned Tribunal has rightly reinstated the workman with full back wages.

50. With regard to the aforesaid issue, the learned Tribunal held that the workman's termination was in violation of the provisions of Section 25F of the ID Act which mandates that the workman be issued a prior notice of termination and accordingly granted the relief of reinstating the

workman along with full back wages. At this juncture, this Court finds it imperative to discuss the law *qua* reinstatement of services of a workman.

51. Reinstatement is an act which aims to rectify an act of wrongful termination by restoring an employee to their previous position on the same terms and conditions of their appointment. However, the settled position of law is clear with regard to the said relief as the Courts in a catena of judgments, have repeatedly held that the ordinary principles of reinstatement do not automatically apply in all cases.

52. Undoubtedly, if a termination is found to be violative in terms of non-compliance of prerequisites as mentioned under Section 25F of the ID Act, the relief of reinstatement ordinarily follows, however, the jurisprudence *qua* the same has shifted in the recent times as the Courts have consistently held that the said relief is not automatic and the workman shall be fairly compensated in lieu of the relief of reinstatement.

53. Reliance in this regard can be placed upon the judgment passed by the Hon'ble Supreme Court in ***Jagbir Singh v. Haryana State Agriculture Marketing Board and Another***[6]**,** wherein it was held that the relief of reinstatement shall not be granted automatically, and the relief to be granted depends upon the peculiar facts and circumstances wherein the Labour Court may also award monetary compensation instead of reinstatement to meet the ends of justice. The relevant extracts of the same are as follows:

> *"**7**. It is true that the earlier view of the Supreme Court articulated in many decisions reflected the legal position that if the termination of an employee was*

[6] **(2009) 15 SCC 327**

found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, the Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not be automatically passed. The award of reinstatement with full back wages in a case where the workman particularly a daily wager, who has completed 240 days of work in a year preceding the date of termination has not been found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee.

****

14. *It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."*

54. The finding of the learned Tribunal *qua* the grant of relief of reinstatement to the present workman, with full back wages, was opposed

by the learned counsel for the PNB. He placed reliance upon a recent decision passed by this Court in ***AIIMS v. Ashok Kumar (Supra),*** wherein it was held as follows:

> *"**25**. Bearing in mind the reasoning afforded by the learned Labour Court, this Court deems it imperative to briefly state the position of law as to in what circumstances may the Court grant the relief of compensation in lieu of reinstatement. The Hon'ble Supreme Court in State of Uttarakhand v. Raj Kumar, (2019) 14 SCC 353, observed as to how and when must the Labour Court/Tribunal grant the relief of compensation in lieu of reinstalment along with back wages. The relevant paragraphs are reproduced herein below:*
>
> > *".....9. In our opinion, the case at hand is covered by the two decisions of this Court rendered in BSNL v. Bhurumal [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] and Distt. Development Officer v. Satish Kantilal Amrelia [Distt. Development Officer v. Satish Kantilal Amrelia, (2018) 12 SCC 298 : (2018) 2 SCC (L&S) 276].*
> >
> > *10. It is apposite to reproduce what this Court has held in BSNL [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] : (SCC p. 189, paras 33-35)*
> >
> > *"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural*

defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that

> *persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied……"*
>
> ***26**. Upon perusal of the aforementioned judicial dictum, it is inferred that ordinarily when the termination is found to be illegal, the principle of grant of reinstatement with full back wages has to be applied as per the facts and circumstances of each case and shall not be awarded mechanically. It is further observed that termination of a daily-wage worker where, found illegal on account of procedural defects, reinstatement with back wages is not to be construed automatically rather, in the interest of justice, the workman shall be granted a relief in the form of a lump sum monetary* compensation as it is more appropriate."

55. The learned counsel for the PNB has also relied upon another judgment of the Hon'ble Supreme Court passed in ***Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors.***[7]**,** wherein a similar view was taken that even if the termination of the workman is found to be illegal, being in violation of Section 25F of the ID Act, the relief of reinstatement shall not be mechanically granted. The workmen therein were engaged as daily wagers, 25 years before the date of judgment, who worked for a period of 2 to 3 years, therefore, the reinstatement with full back wages granted by the learned Tribunal was found to be unjustified and the workmen were awarded a compensation

[7] **(2010) 6 SCC 773**

amount to the tune of Rs. 40,000/- each in lieu of the services rendered by them during the relevant period.

56. The principle discussed herein above has also been affirmed by the Hon'ble Supreme Court in the judgment ***M.P. Admn. v. Tribhuban***[8]**,** wherein it was directed that that non-compliance of Section 25F of the ID Act entitles a workman for some relief and such relief does not necessarily has to be the reinstatement, instead, if the Court deems fit, compensation may be awarded.

57. Therefore, it is transpired that the Hon'ble Supreme Court, in a catena of decisions, has time and again substituted the direction of reinstatement with full back wages by monetary compensation.

58. Bearing in mind the merits of the instant case, it is relevant to mention herein that the workman was irregularly appointed on an *ad hoc* basis and worked for a total of 1553 days, therefore, it is evident that there was a violation of Section 25F of the ID Act and in view of his illegal termination, the learned Tribunal *vide* the impugned award, reinstated him with full back wages.

59. For the reasons stated hereinabove and on the basis of the law settled in the aforementioned judicial dictum, it is well settled that in a situation such as in the present case, a workman may be granted adequate monetary compensation instead of the relief of reinstatement with full back wages.

60. It is made clear that this Court is not intervening with the finding of the learned Tribunal *qua* the workman's illegal termination, however, this Court is bound to appreciate the aforesaid settled position of law, by

[8] **(2007) 9 SCC 748**

virtue of which, it is of the considered view that the finding of the learned Tribunal in granting the relief of reinstatement to the workman, warrants interference. Therefore, this Court deems it fit that the workman be monetarily compensated in lieu of the relief granted *qua* reinstatement his services with full back wages.

61. For the purpose of awarding an adequate compensation, a accumulation of factors need to be considered such as the procedure of employment, the nature of employment, the duration of service, etc. It is noteworthy to mention herein that the workman was engaged as a sweeper on an *ad hoc* basis from 30th September, 1993 and worked there till 31st December, 1997, thus he rendered services for a total period of 1553 days.

62. At this stage, to decide upon the quantum of compensation, this Court deems it necessary to refer to the judgment of Hon'ble Supreme Court in ***Anil Mithra v. Sree Sankaracharya University of Sanskrit,*** [9], wherein the Hon'ble Court, while holding that the termination of the appellants/workmen was in violation of Section 25F of the ID Act, a compensation amount to the tune of Rs. 2,50,000/- was awarded to each workman in lieu of their reinstatement with 50% back wages, considering that they were engaged as daily wagers for a term starting from 1993 till 1997.

63. Bearing in mind the aforesaid factors and the above stated decisions, this Court deems it appropriate to grant a compensation of Rs. 2,50,000/- to the workman herein in lieu of the relief of reinstatement

[9] **(2022) 17 SCC 505**

with full back wages as awarded by the learned Tribunal in order to meet the ends of justice.

64. Accordingly, the relief of reinstatement of services along with full back wages is set aside and the workman is awarded a compensation of Rs. 2,50,000/- instead of reinstatement along with full back wages. The PNB is directed to pay the workman a compensation of Rs. 2,50,000/- within a period of four weeks from today, failing which, the same shall carry an interest @ 9% per annum.

65. In view of the aforesaid terms, issue (a) stands decided in favour of the PNB.

ISSUE (b)- Whether the learned Tribunal erred by denying the workman the relief of regularization of his services?

66. Now this Court shall deal with the issue of regularization of services of the workman.

67. On the aforesaid issue, it has been contended by the learned counsel appearing on behalf of the workman that the finding of the learned Tribunal *qua* denying the claim of regularization of his services is liable to be set aside as the same has been passed erroneously and without proper application of law. It has been argued that the workman is eligible for regularization of his services in view of the fact that he was appointed with due procedure as per the Bank's policy and he is entitled for the regularization of his services in terms of the one-time measure scheme laid down in ***Uma Devi (Supra)*** for the services rendered by him for a continuous period of 1553 days as a sweeper in the PNB.

68. *Per Contra*, the learned counsel for the PNB submitted that the aspect of regularization has been duly dealt with by the learned Tribunal

after thoroughly perusing the facts and evidences placed before it. Further, the learned Tribunal has rightly applied the law with regard to the above referred judgment as working for a continuous period of 1553 days would not entitle the workman for regularization of his services.

69. As already mentioned earlier, the scope of this Court in interfering with the factual findings of a Labour Court under its writ jurisdiction is limited as it is settled law that a Writ Court need not delve into the merits of the case by re-appreciation of facts and circumstances and thus, as per the settled position of law, a Writ Court shall exercise the jurisdiction in a supervisory manner. However, the interference of the Writ Courts is only warranted in cases where the rights of the aggrieved party have been grossly violated due to the erroneous findings of the Court below and the said erroneous finding is apparent on the face of the record.

70. During the course of the arguments, the learned counsel for the workman has heavily relied upon the decision passed by the Hon'ble Supreme Court in ***Uma Devi (Supra)*** and has argued that the finding of the learned Tribunal with respect to regularization is illegal and contrary to the aforesaid judgment as it provides for a scheme to consider regularization as a one-time measure. Therefore, the crux of the arguments advanced on behalf of the workman is that he is eligible for regularization of his services and the denial of the same by the learned Tribunal is in contravention to the settled position of law.

71. At this juncture, it is imperative to note the findings of the Constitutional Bench of the Hon'ble Supreme Court in ***Uma Devi (Supra)***, relevant extracts of which are as under: -

*"**4.** .....Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time, that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.*

****

***43.** Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of*

appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

****

53. *One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR*

1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

72. This Court has meticulously perused the relevant portions of the aforesaid judgment wherein the Hon'ble Supreme Court has categorically held that a casual wage worker who has been appointed on a temporary basis is not entitled to be absorbed in regular services or be made permanent. Further, it has been made clear that the termination of employment of such nature would not necessitate the right to be regularized merely because he continued working for a time beyond the term of his employment.

73. Therefore, the Hon'ble Court has pertinently stated that the High Courts under Article 226 of the Constitution of India, shall desist from issuing directions pertaining to regularization of an employee who has not secured regular appointment as per the established procedure of appointment in the concerned entity. Thus, such appointment of a workman which has been made without the established procedure does not confer any legal right to him to be made permanent or regularized in the concerned entity.

74. The jurisprudence behind the said constitutional scheme is that in case the regularization is granted to a workman who has approached the Court concerned seeking the said relief, the same will open another mode of public employment which is impermissible in law. Therefore, such a direction of regularization would impose financial burden on the State to make an irregularly appointed worker as permanent.

75. However, the aforesaid judgment carves out an exception to the above principle by emphasizing that relief of regularization, which is not under the cover of the orders of the Courts or Tribunals, may be considered on merits in cases where irregularly appointed workmen have continued to work for a period of ten years or more against duly sanctioned vacant posts. It has been held that in such cases, the Union of India, the State Governments and their instrumentalities shall take initiative in order to regularize the services of such workmen as a one-time measure.

76. Summarily stated, the aforesaid judicial *dicta* sets a precedent by categorically holding that an irregularly appointed workman, working for an unsancetioned post, is ineligible for the claim of regularization and

thus, no employees so appointed shall be granted the relief to be made permanent on the expiry of their appointments. The general exception to the aforesaid rule is that in case such workman has continued working for a period of ten years or more, against a vacant post, the regularization of his services may be considered by the Courts as a one-time measure.

77. At this juncture, this Court deems it necessary to mention herein that the Hon'ble Supreme Court in its decision passed in ***Hari Nandan Prasad v. Food Corporation of India,***[10]**,** has clarified the applicability of the judgment of ***Uma Devi (Supra)*** in matters pertaining to industrial dispute cases, wherein it was held as follows:

> *"34. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are post available, in the absence of any unfair labour practice the Labour court would not give direction for regularization 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 regularization 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 regularized 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 regularization in such cases may be legally justified, otherwise, non−regularization of the left over workers itself would amount to invidious discrimination*

[10] **(2014) 7 SCC 190**

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."

78. Therefore, upon a harmonious construction of the aforesaid judgment along with the judgment of ***Uma Devi (Supra),*** it can be construed that justice shall be served while balancing the rights and interest of the aggrieved workmen as well as the entity concerned. Therefore, a daily wage worker cannot claim the right to be regularized, unless a formal policy of regularization in the concerned organization exists, as the same will amount to back door entry which is violative of Article 14 of the Constitution of India.

79. The learned counsel for the PNB has brought the attention of this Court upon the judgment passed by the Hon'ble Supreme Court in ***U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh,***[11]**,** wherein the Hon'ble Court held that the concept of regularization is clearly linked with Article 14 of the Constitution of India and if the merits of a case is covered under the judgment of ***Uma Devi (Supra),*** the Industrial Adjudicator can modify the relief, but that does not dilute the observations made in the judgment of ***Uma Devi (Supra)***. Briefly stated, the abovementioned judgment held that the decision of the Hon'ble Court in ***Uma Devi (Supra)*** is applicable in cases pertaining to industrial disputes.

80. Moreover, a Coordinate Bench of this Court in ***Rahul Sharma v. North Delhi Municipal Corpn.,***[12]while relying upon the judicial

[11] **(2007) 5 SCC 755**
[12] **2018 SCC OnLine Del 9580**

precedent of ***Uma Devi (Supra),*** held that the workmen therein had no legal right to seek the relief of regularization in the absence of a sanctioned post as their services came to an end after expiry of the contractual period. Therefore, it was held that they could only be granted a lump sum compensation amount which had been adequately granted in the impugned award therein.

81. Moreover, in ***Madhyamik Shiksha Parishad v. Anil Kumar Mishra,***[13]**,** the Hon'ble Supreme Court held that the ground of completion of 240 days of work does not entitle a workman to avail the relief of regularization as the same is not an absolute right.

82. Therefore, on question of regularization of workman appointed on *ad hoc* or daily wage basis, the Courts have time and again, and in a large number of cases clarified that in order to seek the relief of regularization, there must be a regular and permanent post against which the workman has been appointed through the requisite recruitment process.

83. Now coming back to the merits of the instant case.

84. The learned Tribunal while dealing with the aforesaid issue, held that the duration of the workman's work tenure of 1553 days is not sufficient to prove that he is entitled to be regularized. Moreover, it has been stated in the impugned order that there was no existence of any regular post of sweeper against which the present workman was working. It was also observed by the learned Tribunal that there is absence of material on record to reflect that he was appointed with due process and in accordance with the established procedure of appointment.

[13] **(2005) 5 SCC 122**

85. Therefore, the learned Tribunal, on the aforesaid aspect, while bearing in mind the fact that he was engaged as a sweeper from 30th September, 1993 till 31st December, 1996, and while appreciating the decision rendered in ***Uma Devi (Supra)***, held that the workman is not entitled for the grant of relief of regularization of his services.

86. At this stage, this Court has referred to the decision rendered in the judgment of ***BSNL v. Bhurumul,***[14]**,** wherein, the Hon'ble Supreme Court, while granting monetary compensation to the workman in lieu of reinstatement, also declined the relief of regularization to the workman. The relevant extract of the same is as under:

> *"33.....Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 :2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay……"*

87. This Court is of the view that there is no dispute in the fact that no formal appointment letter was ever issued to the workman for his appointment in the instant case and therefore, it is concluded that the workman was not engaged by following the due process of selection/appointment.

---

[14] **(2014) 7 SCC 177**

88. Insofar as the contention of the workman is concerned that the PNB has discriminated against him by regularizing the services of his juniors except for his, this Court, upon perusing the seniority list, which has been appended as Annexure P-2 to the instant petition, finds that the workmen, i.e., Ms. Meena and Mr. Ajay Kumar are both senior in ranking to the workman herein.

89. Furthermore, the workman herein has contended that another workman namely, Mr. Vinod Kumar, who is junior to him and at the footing as him, has also been regularized by the PNB. Thus, it is argued that his fundamental right enshrined under Article 14 of the Constitution of India has been grossly violated.

90. It is pertinent to note herein that the workman has further argued that his appointment was made after due process of recruitment as the PNB has deliberately failed to bring on record the circulars dated 6th July, 1991 and circular No.12/96 dated 20th August, 1996, which prescribes the eligibility criteria for filling up permanent vacancy on temporary basis for sweepers and the workman herein was fully eligible for the same. Moreover, it was contended by the workman that his name in the seniority list further reflects that he was appointed as per the legally adopted procedure of appointment.

91. On the aspect of foregoing contention advanced by the workman demanding regularization on parity, it is observed by this Court that he has failed to place on record any relevant document to show as to how the aforesaid people, who have been regularized before him, were recruited by the PNB.

92. Moreover, this Court is of the view that the workman ought to have contended the same before the learned Tribunal or its appellate authority for proper adjudication of this material fact. It is well settled that a Writ Court cannot re-appreciate a dispute on merits by conducting a trial for the adjudication of the same, therefore, the litigants ought to adduce corroborative evidence before the Court concerned for proper adjudication of the matter.

93. As stated earlier, the scope of intervention of this Court in modifying the factual findings of the Labor Court is limited. Accordingly, this Court is of the considered view that the learned Tribunal in the instant case dealt with the issue of regularization of the workman after meticulously examining all the evidence placed before it. The learned Tribunal applied the principle laid down in ***Uma Devi (Supra)*** and categorically held that the workman herein was not properly appointed as there was no vacant posts against which, the workman was appointed.

94. Upon his claim of regularization, it is relevant to note that in paragraph no. 53 of the ***Uma Devi (Supra)*** judgment, the Constitutional Bench of the Hon'ble Supreme Court has laid down an exception to the general principle of denying regularization and held that an employee may be entitled to be regularized in cases where his services have been rendered for a period of ten years or more.

95. Keeping the aforesaid principle in mind and the fact that the workman, being a casual worker has worked with the PNB, against an unsanctioned post, for a period of 1553 days, which is four and a half years approximately, this Court finds that even the benefit laid down hereinabove cannot be extended to the workman in the instant case.

96. This Court is bounded by the jurisprudence of the aforesaid judgment, which specifically directs that the Courts shall refrain from issuing a direction of absorption or regularization of the services of a workman when he has been irregularly engaged against an unsanctioned post.

97. On merits, it is observed that the workman was engaged by the PNB as a sweeper on an *ad hoc* basis in place of another workman namely, Sh. Ravinder Singh, and there is nothing on record to show that he was appointed with due process of recruitment. Moreover, it is also noted that he worked as a sweeper for a period of 1553 days, i.e., a total of 4 years and 3 months approximately, which is insufficient to be regularized as per the decision rendered in the judgment of ***Uma Devi (Supra)***. Thus, it is held that the workman was not appointed by following the requisite procedure of recruitment and therefore, he is not entitled for the relief of regularization.

98. Taking into consideration the aforesaid facts and circumstances, as well as the settled position of law, it is made out that the learned Tribunal rightly adjudicated the issue of regularization and the workman has been unable to put forth any material contention to contradict the findings of the learned Tribunal. In light of the same, it is held that this Court is satisfied with the reasoning given by the learned Tribunal and there is no illegality or errors of law of any kind which is apparent on the face of the record.

99. As stated earlier, the scope of intervention of this Court in modifying the factual findings of the Labor Court is limited. Accordingly, this Court is of the considered view that the learned Tribunal in the

instant case dealt with the issue of regularization of the workman after meticulously examining all the evidence placed before it. The learned Tribunal applied the principle laid down in ***Uma Devi (Supra)*** and categorically held that the workman herein was not properly appointed as there was no vacant posts against which, the workman was appointed.

100. Therefore, this Court finds that the workman herein is not entitled to seek the relief of regularization in view of the fact that his appointment was not made by following the due procedure of selection.

101. Accordingly, this Court finds no infirmity with the findings of the learned Tribunal *qua* denying the relief of regularization and the same is upheld. Thus, issue (b) stands decided in favor of the PNB.

CONCLUSION

102. The captioned writ petitions have been filed against the impugned award passed by the learned Tribunal. The PNB has contended that the decision of the learned Tribunal to reinstate the workman is erroneous and thus, the impugned award is liable to be set aside. In the writ petition filed by the workman, it has been contended therein that the learned Tribunal rightly awarded the relief of reinstatement along with full back wages, however, it erred in not granting regularization of services.

103. As already stated above, a Writ Court shall refrain from interfering with the findings of the Courts below under Article 226 of the Constitution of India on merits as the same have been established under special legislation to adjudicate the dispute and a Writ Court does not sit in appeal to re-appreciate the evidence.

104. Therefore, in light of the above facts and circumstances as well as the discussion on law and merits, the following is held by this Court:

i. Issue (a), i.e., '*whether the workman is entitled to the relief of reinstatement with full back wages as awarded by the learned Tribunal*' is decided in favour of the PNB and the impugned award dated 14th February, 2007 passed by the learned Tribunal is modified and in the interest of justice, the workman is awarded a compensation amount of Rs. 2,50,000/-.

ii. Accordingly, the Punjab National Bank is directed to pay the awarded compensation amount of Rs. 2,50,000/- to the workman, within a period of four weeks from today, failing which, the same shall carry a penal interest @ 9% per annum.

iii. In view of the aforesaid terms, the Writ Petition bearing WP(C) No. 4770/2007 stands disposed. Pending applications, if any, stands dismissed.

iv. Issue (b), i.e., '*whether the learned Tribunal erred by denying the workman the relief of regularization of his services?'* is decided in favour of the PNB and it is held that the workman has been unable to put forth any propositions to make out a case in his favour regarding grant of relief of regularization and this Court is of the considered view that there is no illegality in the finding of the learned Tribunal that the workman is not entitled to the relief of regularization. In view of the same, the workman is at liberty to approach the appropriate forum of law with respect to the issue of parity for regularization of services.

v. Accordingly, the Writ Petition bearing WP(C) No. 5770/2007 stands dismissed. Pending applications, if any, stands dismissed.

105. In view of the foregoing discussions, the impugned award dated 14th February, 2007 passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, New Delhi in dispute bearing ID No. 158/1999 stands modified as per the aforesaid terms.

106. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 16, 2024
gs/sm/ryp