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

% **Reserved on:14th March,2024**
Pronounced on: 31st May, 2024

\+ W.P.(C) 14839/2023 and CM APPL. Nos. 59025/2023 and 59431/2023

MUNICIPAL CORPORATION OF DELHI ..... Petitioner
Through: Ms.Sriparna Chatterjee, SC

versus

SANDEEP YADAV AND ORS ..... Respondents
Through: Mr. Vinay Kumar Garg, Senior Advocate with Mr. Rajiv Agarwal, Ms. Meghna De, Ms. L.Gangmei, Mr. N. Bhushan and Ms. Surbhi, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

1. The instant petition has been filed on behalf of the petitioner under Articles 226 and 227 of the Constitution of India seeking setting aside of the award dated 26th May, 2023 ("impugned Award" hereinafter) passed by the learned Presiding Officer, Industrial Tribunal, Rouse Avenue Courts Complex, New Delhi ("Industrial Tribunal" hereinafter), in case bearing I.D No. 140/2021.

FACTUAL MATRIX

2. The petitioner i.e., South Delhi Municipal Corporation ("petitioner entity" hereinafter) was a statutory body that emerged in the year 2012 from the trifurcation of the Municipal Corporation of Delhi by way of amending the Delhi Municipal Corporation Act, 1957. The petitioner entity is entrusted with the task of maintaining municipal services within the territorial jurisdiction as demarcated to it after the abovesaid trifurcation.

3. The petitioner entity, between the years 2010 and 2015, engaged the respondents ("respondent workmen" hereinafter) on contractual basis, to work at the posts namely 'Malaria Field Workers' ("MFW" hereinafter).

4. Thereafter, the respondent workmen approached the Conciliation Officer for redressal of their grievance i.e., with regard to regularization of their services at the posts of MFW. However, due to the failure of the conciliation, the appropriate government referred the matter for adjudication to the learned Industrial Tribunal vide letter dated 5th August, 2021 in case bearing I.D No. 140/2021, bearing No. L-42011/42/2021IR(DU) in the following terms:

> *"1. Whether the action of the management of South Delhi Municipal Corporation (SDMC) in employing Sh. Sandeep yadav & 251 Others (list attached) as casual or temporary and to continue them as such from year 2010 to 2016 to till date, as raised by Municipal Employees Union vide letter dated 07.11.2020 is proper, legal and justified? If yes, then for what reliefs the workers are entitled to? What directions, if any, are necessary in the matter?*

2. Whether demand for payment of all arrears of difference of salary on the principle of Equal pay for Equal Work' for the period from 2010 to 2016 to till date to Sh. Sandeep Yadav 7 251 others (list attached) with all consequential benefits thereof, as raised by Municipal Employees Union vide letter dated 07.11.2020 is fair, legal and justified? If yes, then for what reliefs the workers are entitled to? What directions, if any, are necessary in the matter?"

5. The learned Industrial Tribunal, upon completion of pleadings, framed four issues, and thereafter, passed the impugned Award dated 26th May, 2023, holding that the services of the respondent workmen were entitled to be regularised with the petitioner entity at the posts of 'permanent field workers' w.e.f. the date of their initial appointment at a salary at par with the permanent field workers.

6. Aggrieved by the aforementioned Award, the petitioner entity has preferred the instant writ petition under Articles 226 and 227 of the Constitution of India seeking setting aside of the same.

SUBMISSIONS

(on behalf of the petitioner)

7. Learned Counsel appearing on behalf of the petitioner entity submitted that the learned Industrial Tribunal erred in passing the impugned Award as the same has been passed without taking into consideration the entire evidence, facts and circumstances of the present case, and therefore, the same is liable to be set aside.

8. It is submitted that the learned Industrial Tribunal erred in holding that the respondent workmen fall within the definition of Section 2(s) of the

Industrial Disputes Act, 1947 ("I.D. Act" hereinafter).It is submitted that the respondent workmen were appointed only on contractual basis and are governed by the terms specified in their letter of appointment.

9. It is submitted that the learned Industrial Tribunal failed to appreciate the fact that if the appointment has not been effectuated in accordance with the constitutional scheme and if they are regularized it would tantamount to perpetuating an illegality in matters relating to public employment therefore, would negate the constitutional scheme adopted by the people.

10. It is submitted that the Hon'ble Supreme Court in ***Secretary, State of Karnataka Vs. Uma Devi***[1], had categorically observed that when appointment of a person is of a contractual nature and the said engagement is not *via* proper selection procedure, it is presupposed that the person was aware of the engagement being of a temporary nature and hence, no legitimate expectation for regularization can be sought.

11. It is submitted that the learned Industrial Tribunal erred in granting regularization to the respondent workmen as the Hon'ble Supreme Court has time and again reiterated the settled position of law with regard to regularization and observing to the effect that the same is not a vested right, and merely because an employee has been in long and continuous employment, it does not entitle him to seek regularization.

12. It is submitted that the learned Industrial Tribunal erred in law by disregarding the applicability of the ratio of landmark cases namely

[1] **(2006) 4 SCC 1**

Secretary, State of Karnataka Vs. Uma Devi (Supra); ***Oil and Natural Gas Corporation Vs. Krishan Gopal & Ors***[2]**.** and ***State Of Rajasthan Vs. Daya Lal***[3] and ***University of Delhi vs Delhi University Contract Employees***[4] wherein the Hon'ble Supreme Court has extensively dealt with the issue of regularization of contractual employees.

13. It is submitted that the learned Industrial Tribunal erred in law by holding that the respondent workmen who have been working on contractual basis are entitled to be regularized as they are subject to unfair labour practices by the petitioner entity. It is submitted that the said reasoning is in direct contradiction to the judgement passed by this Court in ***Delhi Jal Board Vs. Workmen of Earstwhile Delhi Water Supply***[5]**.**

14. It is submitted that the learned Industrial Tribunal erred in law by failing to appreciate the fact that the petitioner entity being an instrumentality of the State is entrusted with the power to frame and formulate its own policies and as per the settled position of law, the Tribunals must not interfere with the same unless a gross violation of the principles as enshrined in the Constitution of India is apparent. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon the judgments passed in ***Peerless General Finance and***

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[2] **(2020) 3 SCALE 272**
[3] **(2011) 2 SCC 429**
[4] **(2021) 16 SCC 71**
[5] **2006 SCC Online Del 170**

Investment Company Limited Vs. Reserve Bank Of India[6] and ***Premium Granites Vs. State Of Tamil Nadu***[7].

15. It is submitted that the learned Industrial Tribunal erred in law by premising its reasoning on the principle of 'equal pay for equal work' as contractual and regular appointment do not stand on an equal footing and since the contractual employees form a distinct class, therefore, they fall under the exception of Article 14 of the Constitution of India.

16. It is submitted that the learned Industrial Tribunal erred in law by granting retrospective regularization to the respondent workmen which is in direct contradiction to the judgement passed by this Court in ***Cyprian Kujur & Another Vs. UOI & Others***[8] wherein it was held that regularization of employees appointed on *ad hoc* basis cannot be given retrospective effect.

17. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner entity prays that the instant petition may be allowed, and the relief as prayed, may be granted.

(on behalf of the respondent)

18. *Per contra*, Mr. Vinay Kumar Garg, learned senior counsel for the respondent workmen vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived, and the impugned Award has been passed after taking into consideration the settled position of law, and the entire evidence on record hence, the same is liable to be dismissed.

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[6] **(1992) 2 SCC 343**
[7] **(1994) 2 SCC 691**
[8] **2023 SCC ONLINE Del 3248**

19. It is submitted at the outset that the instant petition is nothing but a gross misuse of law as it does not raise a substantial question of law rather the petitioner entity intends to harass the respondent workmen by denying the relief as granted by the learned Industrial Tribunal by way of extended litigation.

20. It is submitted that the impugned Award has been rightfully passed by the learned Industrial Tribunal as the witness appearing on behalf of the petitioner entity admitted the fact that the respondent workmen have been working against vacant posts of Field Workers but getting wages as per the minimum wages notified by the Government, and have been discharging duties similar to those of regular Field Workers.

21. It is further submitted that although the petitioner entity claimed that regular recruitment is done through the DSSSB however, as per Ex MW-1/W3 there exist 352 vacancies for the post of Field Workers and no post has been filled *via* the recruitment carried out by the DSSSB.

22. It is further submitted that the petitioner under the garb of the writ jurisdiction is raising fresh pleas which were not asserted before the learned Industrial Tribunal, and therefore, the instant petition is liable to be dismissed on this ground alone.

23. It is submitted that the instant writ petition is not maintainable as the petitioner entity is seeking re-appreciation of the findings recorded by the learned Industrial Tribunal which is impermissible in law as the standard of interference by a writ court is very limited and re-appreciation of evidence cannot be done under the writ jurisdiction. To substantiate the same, the

learned counsel for the respondent workmen placed reliance upon the judgments passed in ***Syed Yakoob vs K.S. Radhakrishnan & Ors*** [9]and ***MCD vs Asha Ram & Anr***[10].

24. It is submitted that the learned Industrial Tribunal has rightfully held that the respondents worked as contract employees for years on lesser salary, hence, the petitioner entity had indulged into unfair labour practices by depriving the respondent workmen the salary and status of permanent employees. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon a judgment passed in ***Chief Conservator of Forests and another v. Jagannath Maruti Kondhare***[11].

25. It is submitted that the contentions raised by the petitioner entity that the terms of appointment expressly state that the said employment is purely contractual and shall not vest any right for regularization thus placing a bar upon the respondent workmen to seek regularization is arbitrary and against public policy as the respondent workmen had no other choice than to sign the contract. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon a judgment passed in ***Central Inland Water Transport Corporation Limited and Anr vs Brojo Nath Ganguly & Anr***[12].

26. It is submitted that the averments made on behalf of the petitioner entity that the respondent workmen being engaged on purely contractual basis therefore**,** the learned Industrial Tribunal ought not to have granted the

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[9] AIR 1964 SC 477
[10]117 (2005) DL T 63
[11]AIR 1996 SC 2898
[12] (1986) 3 sec 156

relief of regularization is bad in the eyes of law as the Hon'ble Supreme Court has time and again held that the Tribunals are entrusted with the power to make appropriate awards in determining industrial disputes brought before it. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon the judgments passed in ***Bharat Bank Ltd. v. Employees of Bharat Bank Ltd***[13] ***; Bidi, Bidi Leaves' and Tobacco Merchants Association. Vs The State of Bombay***[14] *and* ***ONGC vs Krishan Gopal & Ors***[15].

27. It is submitted that the averment made by the learned counsel for the petitioner entity that the impugned Award is defective and is against the ratio of the judgement passed in ***Secretary, State of Karnataka Vs. Uma Devi (Supra)*** is untenable as the facts and circumstances of the instant matter are different and also that the true intent of ***Uma Devi (Supra)*** was not to give a free hand to the employer to commit unfair labour practices against the workmen. To substantiate the same, the learned counsel for the respondent workmen placed reliance upon the judgments passed in ***Sheo Narain Nagar & Ors vs State of Uttar Pradesh & Ors*** [16] and ***The Project Director Department of Rural Development Government of NCT of Delhi v. Its workman through Delhi Prashashan Vikas Vibhag Industrial Employees Union***[17].

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[13] **(1950) LLJ 921, 948-49 (SC)**
[14] **AIR 1962 SC 486**
[15] **2020 SCC online SC 150**
[16] **(2018) 13 SCC 432**
[17] **2019 SCC Online Del 7796**

28. It is further submitted that the contention raised by the petitioner entity that granting retrospective regularization is contrary to the law is untenable as this Court vide its judgement in ***Delhi Administration Vs Yogender Singh***[18] held that an industrial Court can grant relief from retrospective effect as well.

29. Therefore, in light of the foregoing submissions the learned senior counsel appearing on behalf of the respondent workmen prayed that the instant petition, being devoid of any merit is liable to be dismissed.

ANALYSIS AND FINDINGS

30. The petitioner has approached this Court seeking setting aside of the impugned Award dated 26th May, 2023 passed by the learned Industrial Tribunal in I.D No. 140/2021 whereby, the respondent workmen were held to be entitled for regularization at the posts of 'permanent field workers' with the petitioner entity from the date of their initial appointment and were also entitled to salary of the permanent field workers from the date of their initial appointment.

31. It is the case of the petitioner entity that the impugned Award is bad in law as the same has been passed without taking into consideration the entire evidence, facts and circumstances of the case. It is contended that learned Industrial Tribunal erred in holding that the respondent workmen fall within the definition of Section 2(s) of the I.D Act and that the Hon'ble Supreme Court has held that the contractual appointment presuppose that no

[18] **65 (1997) DLT 605**

legitimate expectation for regularization can be sought. It is contended regularization is not a vested right and merely because an employee has been in long and continuous employment, it does not entitle him to seek regularization.

32. It is further contended that the learned Industrial Tribunal erred in law by disregarding the applicability of the ratio of landmark cases namely ***Secretary, State of Karnataka Vs. Uma Devi (Supra)*** which is the benchmark judgement when it comes to regularization. It is submitted that the learned Industrial Tribunal erred in law by premising its reasoning on the principle of 'equal pay for equal work' as contractual and regular appointment do not stand on an equal footing and form two distinct class of employees. It is also contended that the Tribunals must not interfere with the administrative policies of the management unless it observes gross violation of the principles as enshrined in the Constitution of India as the management is entrusted with the power to frame and formulate its own policies.

33. In rival contentions, the respondent workmen vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived as it does not raise a substantial question of law and the impugned Award has been rightfully adjudicated. It is contended that it is an admitted position on behalf of the management witness that the respondent workmen have been working against vacant posts and discharging duties similar to those of regular Field Workers however has been drawing wages as per the minimum wages Act.

34. It is further contended that the instant petition is nothing but gross misuse of law as the standard of interference by a writ court is very limited and re-appreciation of evidence cannot be done under the writ jurisdiction. It is contended that the learned Industrial Tribunal has rightfully held that the respondent workmen have been subjected to unfair labour practice as they have been working as contract employees for years on lesser salary. It is further contended that the Hon'ble Supreme Court has reiterated time and again that the Tribunals are entrusted with the power to make appropriate awards in determining industrial disputes brought before it thus it cannot be contended by the petitioner entity that the learned Tribunal is not vested with powers to grant regularization to contractual employees.

35. The short question which falls for adjudication is whether the impugned order dated 26th May, 2023 suffers from illegality which merits interference of this Court.

36. The relevant portion of the impugned award has been reproduced herein below:

> *"The following issues were framed for adjudication.*
> *1.Whether the proceeding is maintainable and the claimants are workmen define u/s 2(S) of the ID Act.*
> *2.Whether there exist employer and employee relationship between the claimant and the management.*
> *3.Whether the demand raised by the claimant for equal pay of equal work and regularization in service is justified.*
> *4.To what relief the claimants are entitled to.*
>
> ***[***]***
>
> ***Findings***
> ***Issue no. 1***

The mgt has challenged the maintainability of the proceeding on two grounds. That the claimants are not workmen as per the definition under section 2(S) of the ID Act. It is also argued by the mgt that the dispute has not been espoused by the union and as such it cannot be treated as an Industrial Dispute. To this the Ld. A/R for the mgt submitted that the witness examined as WW-2 who is none but the General Secretary of the Municipal Employees Union has clearly stated about the espousal of the dispute by the Union and the claimants including ww1 are the members of the said union. This statement of the witness has not been discredited in any manner by the mgt. On behalf of the claimants, reliance has been placed in the case of ***J.H Jhadav vs. Forbes Gokak Ltd. AIR 2005 SC 998,*** *and argument was advanced to state that when the cause of the claimants has been espoused by the union, it would be wrong to state that the proceeding is not maintainable for want of espousal. He also argued that the Hon'ble Supreme Court in the said judgment have held that for espousal, there is no particular form prescribed to effect such espousal. The union, when expresses itself in the form of a resolution, and if the same is proved, it should be held that there was espousal of the claimants' cause. It this case, the oral evidence of ww2 coupled with the documents marked as ww1/ 4 having the list of the members as annexure A clearly proves that the cause of the claimants was espoused by the union and a resolution to that effect was passed. Hence, it is held that the proceeding is maintainable for the proper espousal of the cause. The other objection taken by the mgt is that the claimants were appointed as contractual workers and as such they are not covered under the definition of workmen provided under section 2(S) of the ID Act. This argument of the Ld. A/R of the mgt does not sound convincing since the said provision nowhere keeps out the contractual workers from out of the definition of workman. Hence it is held that the objections taken by the mgt with regard to the*

maintainability is not correct and the issue is accordingly decided in favour of the claimants.

Issue no. 2 & 3

In the w.s. the mgt has not specifically denied the employer and employee relationship between the mgt and the claimants. The only objection is that they are contractual employees and as per the terms of their employment they cannot claim regularization. On the other hand on behalf of the claimant it is has been argued that the claimants have worked continuously for a period of more than 5 years in the establishment of the mgt. Many of them were appointed in the year 2010 and others during the year 2013 and 2015. All of them were appointed through the selection process conducted by the Board constituted by the mgt. It is the further case of the claimants that since the initial date of their joining they are working continuously and discharging the permanent nature of work. But the mgt omitted to regularize their services despite having huge number of vacancies.

The oral evidence of WW1, who is one of the claimants and whose evidence has been adopted by the remaining claimants, clearly proves that the claimants/workmen are working in the establishment of the mgt. The mgt examined one Rakesh Ravat the Administrative Officer (Public Health) as mw1. During cross examination the said witness stated in clear terms that the mgt has no dispute with regard to the details of the claimants as mentioned in annexure A filed with the claim petition. He also admitted that the claimants were employed pursuant to an open advertisement followed by a selection process conducted by the designated Board to find out the suitability of the candidates. He also admitted that the details of the claimants as mentioned in annexure A are correct. His further admission is that these claimants are working against the vacant posts of field workers, carrying the regular pay scale but getting the wage as per the

minimum wage notified by the Govt. The witness also admitted during cross examination that the claimants are discharging the similar nature of duty and responsibility as discharged by the regular field workers and they are working for 8 hours a day. When asked, as to why the claim of regularization advanced by the claimants has not been considered, the witness of the mgt explained that these regular vacant pots are to be filled up by the Delhi Subordinate Service Selection Board. On the basis of this evidence Mr. Agarwal the Ld. A/R for the mgt argued that the mgt, in order to deprive the claimant of their law full rights is intentionally making them to work as contractual employees, even though there are vacancies in the cadre to accommodate all the claimants of this proceeding. He drew the attention of the Tribunal to the documents marked as mw1/w3 which is the information received by the claimants under the RTI. This document was confronted to the mgt witness. According to this information, the SDMC has a vacancy of 352 post in the cadre of field workers and there is no difference between the contractual and regular field workers so far as the nature of work is concerned and there is no Regulation, regulating the service condition of the contractual field workers, who come under the category of unskilled workers. The mgt witness, though at one point of cross examination stated that the regular vacancies of malaria filed workers are to be filled through the DSSSB, at the other point admitted that not a single person has so far been appointed as field workers through DSSSB. On the basis of this, the Ld. A/R for the claimants submitted that the claimants/workmen discharging similar nature of work with the regular counterparts are being subjected to discrimination and unfair labour practice as the mgt is not paying them the proper salary, benefits and status of regular employees.

Now it is to be seen if the claimants of this proceeding were subjected to unfair Labour Practice or not. ***"Unfair Labour Practice"*** *as defined u/s 2(ra) means any of the practice*

specified in the 5th Schedule of the ID Act. Under the said 5th Schedule, to employee workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair Labour Practice. In this case the documents and the oral evidence as adduced by the claimant clearly prove that they are working continuously for five years or more as contractual workers, but not getting the wage and privilege at par with the regular field workers. In the case of ***Chief Conservator of Forests & Anr. Vs. Jagannath Maruti Kondhare & Ors, (1996) 2 SCC 293 [Para-22, 26-29] and Project Dir. Dep of Rural Development vs. Its Workmen, 2019 SCC OnLine Del 7796[Para 28 &29]*** *the Hon'ble Supreme Court have clearly held when the employees accepted the employment with full knowledge that they will be paid only daily wage and will not get the same salary and condition of service at par with the regular counterparts, they cannot provide an escape to the employer to avoid the mandate of equality enshrined in Article 14 of the Constitution of India. Thus it is concluded that the mgt by denying equal pay for equal work to the claimants on the pretext that they accepted the job knowing fully well the service condition of the job subjected them to unfair Labour Practice which need to be remedied.*

The Ld A/R for the Mgt strenuously argued that the law and the policy of public employment does not permit regularization of the service of the contractual employees against regular posts. He also submitted that any action in this regard shall put the mgt under heavy financial burden. To support his stand he placed reliance in the case of ***Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1.*** *On behalf of the claimants objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.*

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization, since the same is opposed to the policy of public employment. But in this case as claimed by the claimants and admitted by the mgt witness the claimant were appointed pursuant to an open advertisement and through a proper selection process conducted by the designated Board. Hence, it is to be examined if the principle decided in the case of Uma Devi deprives the claimants of their right for regularization.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of ***Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556*** *wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers of Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power. Besides the case of Maharashtra Road Transport referred supra the Hon'ble supreme court in the case of* ***Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided*** *in the Civil Appeal No. 6327 of 2014 disposed of on 09th July 2014 have held that:-*

> *"The provisions of Industrial Disputes Act and the powers of the Industrial and labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the*

subject matter for decision nor was it decided in Umadevi's Case."

Thus, after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh referred supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to unfair labour practice being engaged for work on temporary basis for a prolong period.

The witness examined on behalf of the mgt has stated that the post of regular field workers are requested to be filled by DSSSB, but so far ,the said post have not been filled up. The information obtained by the claimants under RTI and the oral evidence of mw1, clearly establishes that there are still vacancies in the regular cadre of field workers in the mgt. Though under the scope of the reference, this Tribunal is to adjudicate about the legality and justification of the demand raised by the union with regard to the action of the mgt allowing the claimants to work as contractual employees, the industrial adjudicator under the Industrial Dispute Acts enjoys wide power for granting relief which would be proper under a given circumstances. In the case of ***Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7SCC 190*** *the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the Awards and the settlement. Thus, the Act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of Bharat Bank Limited vs. Employees of the* ***Bharat Bank Limited reported in (1950) LLJ 921***

Supreme Court *the court came to hold that in setting the dispute between the employer and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper, though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace Here is a case, where the mgt had admitted the long and continuous employment of the claimants in it's establishment being selected through a procedure. It is also an admitted state of fact that the mgt is having huge number of vacancies in the regular cadre of field workers and till date none of those posts have been filled through DSSSB. In such a situation, the claim of the claimants for regularization of their service with all consequential benefits seems justified. They are also found entitle to equal pay for equal work for the reason that they are discharging the similar nature of work as that of the regular filed workers and as stated by MW1, they are working in the field for 8 hours a day. On behalf of the claimants reliance has been placed in the case of* ***Dhirender Chamuli vs. state of U.P, 1986-1,SCC,637*** *in which the Hon'ble Supreme Court have clearly held that:-*

"It is difficult to understand how the Central Government can deny to these employees the same salary and conditions of service as Class IV employees regularly appointed against sanctioned posts. It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras Knowing fully well that they will be paidonly daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a Welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be

remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees,cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the different Nehru Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference, whether they are appointed in sanctioned posts or not. So long as they are performing the same duties they must receive the same salary and conditions of service as Class IV employees."

In view of the principle laid down in the case of ***Dhirender Chamuli*** *by the Hon'ble SC ,it is difficult to accept the objection of the mgt wherein it has been stated that the claimants since had accepted the terms of their appointment as contractual employees, they cannot claim equal pay at par with the regular employees. It is necessary to deal with the objection of the mgt saying that regularization would create heavy financial burden on the mgt. The mgt being the employer, is duty bound to pay the appropriate remuneration to the persons employed by it and the right for appropriate remuneration in lieu of their service is a constitutional right of a citizen. In the case of* ***Chief Conservator of Forests & Anr. Vs. Jagannath Maruti Kondhare & Ors, (1996) 2 SCC 293*** *the Hon'ble Supreme Court have held that the right to back wages or*

minimum wage or fair wage flows automatically from the relief of regularization to which no objection reasonably be taken. The financial strain on the state exchequer cannot be a ground for consideration when the workmen held entitled to permanency or for higher pay. In this case, as observed in the preceding paragraph, the workmen have been victimized on account of unfair labour practice meted to them, since the mgt in spite of having vacancies in the permanent cadre made them to work as contractual employees for years together on a consolidated salary and by denying the other consequential benefits of the regular employees. Keeping the situation in view, it is felt proper to issue a direction to the mgt to regularize the services of the claimants/workmen from the date of their initial appointment against the posts of permanent field workers and extend the consequential service benefits to them which would meet the ends of justice. This direction is specific in respect of the workmen of this claim petition as per the list annexed to the Award. These two issues are accordingly answered in favour of the claimants.

Issues no. 4

In view of the findings and conclusion arrived in respect of issues no 2 & 3, it is held that the claimants are entitled to be regularized in the post of permanent field workers from the date of their initial appointment along with arrears of different salary on the principle of equal pay for equal work and all other consequential Service benefits.

Hence ordered."

37. Upon perusal of the aforementioned Award, it can be summarily stated that the learned Tribunal had, upon completion of pleadings, framed four issues *firstly*, whether the proceedings are maintainable and whether the claimants are workmen as defined under section 2(s) of the I.D. Act; *secondly*, whether there exists employer-employee relationship between the

claimant and the management; *thirdly*, whether the demand raised by the claimant for equal pay for equal work and regularisation in service is justified; and *fourthly*, to what relief are the claimants entitled.

38. *Qua* Issue No.1, the petitioner has contended that the proceedings are not maintainable for the reason that the claimants are not workmen as defined under section 2(s) of the Act, and that the cause of the workmen has not been properly espoused by the union.

39. The learned counsel for the respondent vehemently opposed the contention of the petition by placing reliance upon the decision of the Hon'ble Supreme Court in the matter of ***J.H Jhadav vs. Forbes Gokak Ltd.***[19]to argue that no particular form has been prescribed to effect an espousal, and the same depends upon and varies with the facts of each case. Further, it was argued that as the union has presented the resolution passed by it in order to raise an industrial dispute in the favour of the workmen, the same will be enough to give effect to the espousal.

40. The learned Tribunal took into consideration the oral evidence on record coupled with the documents presented such as the list of the members of the union, and observed that these evidence clearly serve to prove that the cause of the respondents was properly espoused by the union and a resolution to that effect was passed. Hence, the learned Tribunal decided that the instant proceeding is maintainable as there is proper espousal of the cause of the respondent workmen.

[19] AIR 2005 SC 998

41. Further, as regards the other objection taken by the management, it was observed that the argument that the contractual workers are not *workman* as defined under section 2(s) of the Act, is not convincing as the said provision does not keep out the contractual workers from the definition of workman. Accordingly, issue no. 1 was decided in favour of the respondent workmen and against the petitioner.

42. *Qua* Issue no.2 and Issue no. 3 it was contended by the respondent workmen that they have worked continuously for a period of more than 5 years in the establishment of the petitioner. They were appointed through the proper selection process conducted by the Board constituted by the management and since the initial date of their joining they have been working continuously and discharging the permanent nature of work and despite the same as well as huge number of vacancies, the petitioner management has not regularized their services.

43. The learned Tribunal took into consideration statements of the management witness made in cross-examination showing that the workmen joined their respective posts after being appointed pursuant to an open advertisement and following a proper selection procedure, and thereafter, their services have been continuing under contractual employment as field workers while their regular counterparts have been performing the same job and are getting salary in proper pay scale. The management witness was further told the information regarding the vacancy of posts in the cadre of field workers and with the evidence showing that there is no difference between the contractual and regular field workers so far as the nature of

work is concerned, and there is no regulation, regulating the service condition of the contractual field workers who come under the category of unskilled workers.

44. On the basis of the same, the respondent workmen submitted that the claimants/workmen discharging similar nature of work with the regular counterparts are being subjected to discrimination and unfair labour practice as the management is not paying them the proper salary, benefits and status of regular employees.

45. On the contrary, it was asserted by the petitioner management that the workmen themselves accepted that they will work on contractual basis till the posts get filled up by the regular staff, by the Delhi Subordinate Service Selection Board, so there is no question of fraudulent activity or unfair labour practices by the management. Further, it was contended by the petitioner management that in view of the judgments by the Hon'ble Supreme Court in ***Uma Devi (Supra),*** the law and the policy of public employment does not permit regularization of the service of the contractual employees against regular posts. It was also submitted that any action in this regard shall put the management under heavy financial burden.

46. The learned Tribunal observed that though under the scope of the reference, Tribunal is to adjudicate only on the legality and justification of the demand raised by the union with regard to the action of the petitioner allowing the claimants to work as contractual employees, however, it opined that under the I.D. Act, it has wide powers for granting relief as it deems fit under the given circumstances. The learned Tribunal placed on the judgment

of ***Hari Nandan Prasad and Another vs. Employer I/R to Management FCI***[20] as well as the judgment in ***Bharat Bank Limited vs. Employees of the Bharat Bank Limited***[21] in this regard.

47. The learned Tribunal further took into consideration the argument on behalf of the respondent that the judgment of ***Uma Devi (Supra)*** is not applicable upon the industrial workers. After placing reliance upon the observations of the Hon'ble Supreme Court in the case of ***Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan***[22] and in the case of ***Shri Ajay Pal Singh vs. Haryana Warehousing Corporation*** [23] the learned Tribunal observed that the contention of the management that the judgment of ***Uma Devi (Supra)*** is applicable to the present case, is misplaced in law since the same is not applicable upon the industrial worker. Further, the case of ***Uma Devi (Supra)*** has no applicability to the facts of the present case where the workmen have been subjected to unfair labour practices being engaged to work on temporary basis for a prolonged period.

48. Considering the argument of the management that regularisation of services of the respondent would create heavy burden upon it, the learned Tribunal held that the management, being the employer, is duty bound to pay the appropriate remuneration to the persons employed by it and the right to receive appropriate remuneration in lieu of their service is a constitutional

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[20] (2014)7SCC 190
21 (1950) LLJ 921 Supreme Court
22 (2009)8 SCC Page 556
23 Civil Appeal No. 6327 of 2014

right of a citizen. Further, relying upon the decision of the Hon'ble Supreme Court in ***Chief Conservator of Forests & Anr. Vs. Jagannath Maruti Kondhare & Ors.***[24] the learned Tribunal held that financial strain on the state exchequer cannot be a ground for consideration when the workmen have been held entitled to permanency, or for higher pay.

49. In order to respond to the contention of the petitioner that since the claimants had accepted the terms of their appointment as contractual employees, they cannot claim equal pay at par with the regular employees, the learned Tribunal placed reliance upon the principle laid down in the case of ***Dhirender Chamuli vs. State of U.P***[25] by the Hon'ble Supreme Court, wherein, it was held that the fact that the workmen accepted their employment with full knowledge of its nature, cannot provide an escape to the employer to avoid the mandate of equality as enshrined in Article 14 of the Constitution.

50. In view of the above discussions, the learned Tribunal held that the non-regularisation of the services of the workmen amounts to unfair labour practices and the workmen concerned are entitled for regularization of their services from their respective initial dates of joining.

51. Further, as regards the other issue of existence of Employer-Employee relationship between the management and the workmen, it was observed that the management has not specifically denied the employer-employee relationship between them and the claimants, and the only objection raised

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[24] **(1996) 2 SCC 293**
[25] **1986 (1) SCC 637**

by them was that being contractual workers, the claimants are not entitled for regularisation. Accordingly, Issue no. 2 and 3 were collectively decided in favour of the respondent and against the petitioner.

52. *Qua* Issue no. 4, the learned Tribunal held that the claimants are entitled to be regularized in the post of permanent field workers from the date of their initial appointment along with arrears of different salary on the principle of equal pay for equal work, and also entitled to all the other consequential service benefits. Accordingly, Issue no. 4 was also decided in favour of the respondent and against the petitioner.

53. This Court is of the view that the learned Tribunal *qua* issue no.1 correctly held that after taking into consideration the oral evidence on record coupled with the documents presented which contained the list of the members of the union as part of the annexure, it is proved that the cause of the respondents was properly espoused by the union and a resolution to that effect was passed.

54. It is further opined by this Court that the learned Tribunal correctly held that the respondent workmen being contractual employees also fall within the ambit of the definition of "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947.

55. In view of the aforesaid discussion, this Court is of the view that the Issue no. 1 does not merit any interference of this Court.

56. Before adverting to Issue no.2, this Court shall discuss the settled position of law with regard to the powers of adjudication by the Labour

Court/Industrial Tribunal in terms of the reference made to it by the appropriate government.

57. The Supreme Court in the judgment of ***Hochtief Gammon vs Industrial Tribunal, Bhubaneshwar***[26] opined that Labour Courts are Courts with limited jurisdictions and cannot travel beyond the terms of reference. The relevant paragraph is as follows:

> *"7. In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under Section 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case."*

58. In the judgment of ***National Engineering Industries Limited Vs. State of Rajasthan and Ors*** [27], it was held that the Industrial Tribunal is a creation of a statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. The Tribunal's role is to adjudicate upon the matters specifically referred to it and does not possess the authority to decide on issues outside the scope of the reference. It must confine its adjudication to the terms of the reference and cannot expand or alter the scope of the dispute referred to it.

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[26] **1964 AIR 1746**
[27] **(2000) 1 SCC 371**

59. The Bombay High Court in the case of ***Ashok U. Nikam vs. Tata Power Company Ltd.***[28], opined that the Labour Court cannot travel beyond the terms of reference. The relevant paragraph is as follows:

> *"3. In case of a reference under Section 10 of the Industrial Disputes Act, the Labour Court is not empowered to travel beyond the terms of reference. Either it must be shown that it is a specific term of reference on which the particular relief is claimed before the Court or that consideration of such matter is incidental to the terms of reference and the reliefs claimed thereupon. Unless that is shown, the Industrial Court cannot go into the question. In this case, as I have noted above, the question whether on the date of his last termination, the employee was a permanent employee of the Respondent by virtue of any previous engagement cannot be considered as an incidental matter having regard to the terms of reference. The question to be considered by the Court was whether the employee proved 240 days of continuous service in a period of twelve months preceding his last termination."*

60. In view of the aforesaid judgments, it is as settled position of law that there is a limitation on the Labour Courts to adjudicate the industrial dispute referred to it in terms of the reference only and it cannot beyond the question referred to it since the same falls outside the scope of adjudication as per the mandate of the I.D. Act.

61. Now this Court will reiterate the terms of reference of the impugned award and the same is reproduced herein below:

> *"1. Whether the action of the management of South Delhi Municipal Corporation (SDMC) in employing Sh. Sandeep*

[28] **2019 LLR 273 Bombay High Court**

yadav & 251 Others (list attached) as casual or temporary and to continue them as such from year 2010 to 2016 to till date, as raised by Municipal Employees Union vide letter dated 07.11.2020 is proper, legal and justified? If yes, then for what reliefs the workers are entitled to? What directions, if any, are necessary in the matter?

2. Whether demand for payment of all arrears of difference of salary on the principle of Equal pay for Equal Work' for the period from 2010 to 2016 to till date to Sh. Sandeep Yadav 7 251 others (list attached) with all consequential benefits thereof, as raised by Municipal Employees Union vide letter dated 07.11.2020 is fair, legal and justified? If yes, then for what reliefs the workers are entitled to? What directions, if any, are necessary in the matter?"

62. Upon perusal of the above, it is made out that the terms of reference by the appropriate government was *first*, whether the action of the respondent management in employing the respondent workman and to continue them as casual workers from the years 2010 to 2016 to till date, as raised by Municipal Employees Union vide letter dated 7th November, 2020 is proper, legal and justified and *second,* whether the demand for payment of all arrears of difference of salary on the principle of 'Equal pay for Equal Work' for the period from 2010 to 2016 to till date to the respondent workman with all consequential benefits thereof, as raised by the Municipal Employees Union vide letter dated 7th November, 2020 is fair, legal and justified.

63. The learned Tribunal erred in holding that as per terms of reference, the learned Tribunal shall adjudicate on the legality and justification of the

demand raised by the union with regard to the action of the petitioner allowing the respondent to work as contractual employees, however, under Industrial Disputes Act, 1947 it has wide powers for granting relief as it deems fit under certain given circumstances.

64. This Court is of the view that *qua* Issue no. 2 & 3, the learned Tribunal went beyond the terms of the reference by adjudicating upon the issue of regularisation and it should have restricted itself merely to the terms of reference which were to decide whether the respondent employed as casual workers for the period of 2010-2016 is justified and whether the respondent are entitled to equal pay as paid to the regular employees of the petitioner.

65. It is further opined by this Court that the reliance placed by the learned Tribunal on the judgment of ***Hari Nandan Prasad v. Food Corporation of India, (Supra)*** is misplaced as in the aforesaid judgment, the Courts did not venture out of the terms of reference. Moreover, the reliance of the learned Tribunal on the judgment of ***Bharat Bank Ltd. (Supra)*** is also misplaced as the aforesaid judgment does not lay down that the Labour Court can travel beyond the terms of reference and adjudicate upon issues which have not been referred to it by the appropriate government.

66. In view of the aforesaid discussions, this Court is of the view that the findings made in the impugned award *qua* Issue no. 2 and 3 is liable to be set-aside since the learned Tribunal wrongly ventured beyond the terms of the reference and adjudicated upon the issue whether the respondent workman are entitled to be regularised or not.

67. Therefore, it is held that the learned Tribunal did not have the jurisdiction to comment upon on the aspect of the regularisation.

68. Consequently, the relief awarded in Issue no. 4 by the learned Tribunal based on its observations in the issue no. 2 and 3 is legally untenable and accordingly, set aside since, this Court has set-aside observations of the learned Tribunal *qua* the issue no. 2 and 3.

CONCLUSION

69. It is observed by this Court that the learned Tribunal has itself held that the Tribunal is transgressing the terms of the reference and passed an award in favour of the regularisation of the workmen. It is a settled position of law that the learned Tribunal cannot venture outside the terms of reference, however, in the instant petition the learned Tribunal has wrongly transgressed the terms of reference and regularised the services of the respondent workmen.

70. Taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the considered view that the impugned Award suffers from patent illegality since the learned Tribunal went beyond the scope of the terms of reference and the same is an error apparent on the face of the record which is in contravention to the law settled by the Hon'ble Supreme Court as well as by this Court with regard to the jurisprudence of Labour Laws.

71. In light of the foregoing observations on facts as well as law, the impugned award is partially-set aside in terms of issue no. ii and iii.

72. Accordingly, the instant matter is remanded back to the learned Industrial Tribunal for adjudication *qua* the issue no. (ii) and (iii) and the learned Tribunal is directed to adjudicate upon the same taking into consideration the observations of this Court expeditiously, preferably within a period of six months without giving unnecessary adjournments to either of the parties.

73. In view of the aforesaid discussions, the instant petition is disposed of along with pending applications, if any.

74. The judgment to be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 31, 2024
SV/DB/DA/RYP