(2018) 03 DEL CK 0013

DELHI HIGH COURT

Case No: W.P.(C) 8502 Of 2011 & CM No.5502 Of 2015, W.P.(C) 440 Of 2014

Institute Of Home Economics		APPELLANT
	Vs	
Sh. Prem Pal , Prem Pal Vs Institute Of Home Economics		RESPONDENT

Date of Decision: March 1, 2018

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25-F, 25-F (a) and (b), 2(oo)(bb), 25G, 6-N, 11A
- Code Of Civil Procedure, 1908 - Section 151
- Constitution ofIndia - Article 226, 14, 16
- Industrial Disputes Act, 1947 - Rule 77

Hon'ble Judges: CHANDER SHEKHAR

Bench: Single Bench

Advocate: Ms.Beenashaw N. Soni, Mr.Vinay Sabharwal,

Final Decision: Disposed Of

Judgement

1.The petitioner, i.e. Institute of Home Economics in W.P.(C) No.8502/2011 (hereinafter referred to as petitioner/Management) and the petitioner, i.e.

Prem Pal in W.P.(C) No.440/2014 (hereinafter referred to as respondent/workman) have filed the petitions under Article 226 of the Constitution of

India, seeking quashing of the impugned Award dated 07.05.2011 passed by the Presiding Officer, Labour Court XI, Karkardooma Courts, Delhi (in

short, called â€žthe Labour Court‟) in I.D. No.10/2006, wherein both the parties have challenged the same Award, on the grounds involving the

similar question of facts and law. This judgment shall govern the disposal of both the writ petitions.

2.I have heard the learned counsels for the parties and have also gone through the written synopsis filed by them.

3.The claim of the workman and written statement of the Management, as noticed by the Labour Court, are as follow:-

â€œ2.As per the workman‟s claim, the Management M/s Institute of Home Economics advertised the post of Permanent Laboratory Attendant

in the newspaper Hindustan Times on 29.07.1997. The workman Prem Pal also got an interview letter, appeared in that interview on 25.10.1997 and

was declared selected. The Director of the Management is also alleged to have told the workman that his ad-hoc appointment was against a

permanent post. Therefore, he was likely to be made permanent subsequently. The first appointment letter was from 10.11.1997 to 23.12.1997. After

that the winter vacations started till 12.01.1998. The workman was again appointed on 13.01.1998 to 31.03.1998. This period was extended upto

16.04.1998. From 17.04.1998 to 20.07.1998 it was a period of summer vacations and the workman was given a fresh appointment from 21.07.1998 to

30.07.1998. This practice was continued by the Management till 22.12.2000. In this duration the workman was given employment for all the working

days. The workman claims that his termination of services on 22.12.2000 was in contravention of law. Hence, he claimed reinstatement in services

with full back wages and other consequential benefits / reliefs.

3. The Management filed its reply/ written statement. It was pleaded that the workman was appointed on ad hoc basis vide letter dated 10.11.1997 for

the period from 10.11.1997 to 23.12.1997 and an interview was held on 25.10.1997. The Management also denied that the ad hoc appointment of the

claimant/ workman was against any permanent postâ€

4.Learned counsel for the petitioner/Management has submitted that the award is bad in law and liable to be set aside and relief granted to the

respondent/workman directing him to be reinstated to the same post and position with all the consequential benefits along with 40% of the back wages

since 22.12.2000 till the date of reinstatement of his service, is liable to be set aside and quashed.

5.Per contra, learned counsel for the respondent/workman submitted that the Labour Court, despite coming to the conclusion that the services of the

respondent/workman were illegally terminated by the petitioner/ Management, was unjustified in not granting normal relief of full back wages to the

respondent/workman and thus, the Award to that extent is required to be set aside.

6.Learned counsel for the petitioner/Management has submitted that the petitioner/Management had advertised on 29.07.1997 for six permanent posts

of Laboratory Attendant. One post each was reserved for SC, ST and OBC categories. The selection committee was constituted and it held its

meeting on 25.10.1997. It is submitted that 08 applicants were interviewed for the reserved posts of SC/ST categories and 10 applicants including the

respondent/workman were interviewed for one reserved post of OBC category which included the respondent/workman and 43 candidates were

interviewed for remaining 03 unreserved posts by the said selection committee. Three candidates including the respondent/workman were shortlisted

against one reserved OBC post. The candidate namely Ms. DeepaS hibu was on the top of the list and was thus issued an appointment letter dated

27.10.1997 and she joined duty on 03.11.1997. Thus, the one reserved post of OBC against which the respondent/workman applied and was

shortlisted,got exhausted.The other remaining 05 posts were also filled up and thus, the selection process came to an end and the respondent/workman

was not appointed. Thus, all the said six posts against the sanctioned permanent posts stood exhausted. The respondent/workman admitted this fact in

his cross examination.

7. Learned counsel for the petitioner/Management has further submitted that the appointment of the respondent/workman was only on temporary

basis. She also submitted that due to exigencies of work, the petitioner/Management required another Laboratory Attendant but there was no further

sanctioned post and thus, further permanent appointment could not be made. The appointment could have been made only on temporary basis. The

respondent/workman, who was available, was thus offered this temporary post which was accepted by him on 10.11.1997. The respondent/workman

was issued appointment letter on 10.11.1997 and the terms of the appointment letter clearly stated that the appointment was purely on ad-hoc basis,

for a specific period and it is also stated that the ad-hoc appointment can be terminated at any time during the period without giving any notice or

assigning any reasons. After the completion of the time mentioned in the appointment letter, the respondent/workman due to exigencies of work was

again offered ad-hoc appointment, which the respondent/workman willfully and without any objections accepted. Furthermore, the

respondent/workman also accepted similar further appointments for specific periods as and when the same were offered to him due to exigencies of

work. The last such ad-hoc contractual appointment ended on 22.12.2000, after which the respondent/workman stood relieved and was not given any

appointment.

8.Learned counsel for the petitioner/Management has also submitted that as per the records of the petitioner/Management, the respondent/ workman

had worked for 43 days in the year 1997, 230 days in 1998, 221 days in 1999 and 218 days in the year 2000.

9.It is also submitted that the findings of the Labour Court are contrary to record. The observations made by the Labour Court are without

appreciation of evidence and documents on record. Learned counsel for the petitioner/Management has submitted that the Labour Court erred in

observing that there was some verbal communication between the parties with respect to the assurance given to the respondent/workman that he

would be regularized. The petitioner/Management is an Institution and there is no procedure of verbal orders or assurances; all the appointments are

made by the Authorities as per rules after following the procedure as laid down in University Statute. It is submitted that no officer of the Institute is

competent to give any such assurances as stated by the respondent/workman. The respondent/workman has been making incorrect statements and

the Labour Court has made observation without any basis or evidence on record that verbal communication was made, giving assurance of

permanency to the respondent. In any case, any assurances given by a person not competent or authorized to do so, will not give any legal right to the

respondent/ workman to be regularized. The process of regularization is only done as per the rules and procedure laid down under the Statute.

10. Learned counsel for the petitioner/Management also stated that the observation made by the Labour Court that the then Director Dr. (Mrs.)

Kumud Khanna made some verbal communication giving assurances of permanency to workman‟s services in the Institute, is totally baseless and

without any evidence on record. The petitioner/Management cannot assure the respondent/workman that he will get a permanent appointment, unless

and until he undergoes the process of selection. The respondent/workman in his cross examination has clearly stated that assurance, if any, was given

by Ms. Sharda Gupta, Teacher In-charge. There is no material or documentary evidence on record to say that any assurance for permanency was

given to the respondent/workman at any stage by the Director of the Institute. The respondent/workman was fully aware about the nature of his

employment and he willfully accepted the same. There was no occasion for any person or officer in the Institute to give any such assurances to the

respondent/ workman, as alleged.

11. Learned counsel for the petitioner/Management also submitted that the Labour Court has erroneously gone into the question of competence of Dr.

(Mrs.) Kumud Khanna to sign and verify the pleadings. The respondent/workman has himself admitted that Dr. (Mrs.) Kumud Khanna was the

Director of the Institute and that she had issued an appointment letter to the respondent/workman and thus the Labour Court cannot go into the

question of identity and competency of Dr. (Mrs.) Kumud Khanna. If it is held that she was incompetent, then even the appointment letter of the

respondent/workman is improper and the claim is not maintainable at all. All the appointment letters are in the name of the Institute and University of

Delhi. The Delhi University Act, 1992 clearly mentions the Management Institute, but the same has been ignored by theL abour Court. The Labour

Court has erroneously held that it was nowhere shown that the petitioner/ Management is a legal person capable of being sued or that the persons

filing the pleadings are authorized. The respondent/workman has not disputed this factual position as there are no pleadings on record where these

facts were disputed and thereby there was no requirement for the petitioner/Management to lead any evidence for the said issues. The Labour Court

has made uncalled observations in a very biased manner.

12.It is also stated by the learned counsel for the petitioner/Management that the observations made by the Labour Court, holding that the

respondent/workman was given salary as per fixed pay scale, are totally uncalled for, since the respondent/workman has made no such averments in

his pleadings. The respondent/workman has led no evidence to show that the salary was paid to him from contingency fund or budget allocation. The

Labour Court has wrongly arrived at the conclusion that the respondent/ workman is paid from permanent exchequer, without there being any such

evidence or pleadings on record. The Labour Court has erroneously observed that the argument of the respondent/workman appeals to the logic.

13.She also submitted that the Labour Court has incorrectly interpreted law by holding that the proper procedure was not followed at the time of

appointing and thereafter continuing the workman‟s services. Theappointment of the respondent/workman was not illegal but irregular i.e. the

procedure as laid down by the Statute was not followed while making the appointment. The Selection Committee did not select the respondent/

workman. For making any permanent or regular appointment, the candidate will have to face a duly constituted selection committee. However, for

making ad-hoc or temporary appointments, such procedure is not followed and therefore, said appointments are called irregular appointments. The

Courts in various judgments have laid down the law in this respect which has been completely ignored by the Labour Court.

14.It is further stated by the learned counsel for the petitioner/ Management that the Labour Court has erroneously held that the workman was not

reappointed but some other persons were appointed in the same cadre and on the same post. There is no such evidence on record; in fact, the other

persons who have been appointed after 22.12.2000 are the persons who were selected against the advertisement in 2006, for filling the vacancies of

Laboratory Attendants by a duly constituted Selection Committee. The Labour Court has totally ignored that the respondent/ workman also applied for

the post against the said advertisement but he was not selected. The respondent/workman has not challenged that selection process in any manner and

now, as an afterthought while concealing the correct information, stated that other persons were appointed at the similar post and position.

15.It is also submitted by learned counsel for the petitioner/Management that the Labour Court has not appreciated that the provisions of the Industrial

Disputes Act, 1947 (in short called the â€œI.D. Actâ€), more specifically, Section 25-F are not attracted in the facts of the present case when the

disengagement of the respondent/workman is on the expiry of the period of engagement, which was made for specific period and in accordance with

the terms of the engagement.

16.It is also submitted by learned counsel for the petitioner/Management that Section 25-F of the I.D. Act would otherwise also not be attracted in the

present case, as the respondent/workman in any case has not worked for the mandatory period of 240 days in a year preceding to his disengagement

to claim retrenchment benefits. The respondent/workman has not led any evidence to show that he has worked for this mandatory period as required

under law.

17.Per contra, learned counsel for the respondent/workman submitted that the impugned Award is perfectly valid, except that the relief regarding 40%

back wages granted is not proper as per law and full back wages should have been awarded to the respondent/workman along with the reinstatement.

Learned counsel for the respondent/workman also submitted that the appointment of the respondent/workman was shown to be made on a tenure

basis which was an unfair labour practice. The repeated appointments, re-appointments and extensions given by the Director of the Institute show that

the respondent/workman was made to do a work of permanent nature and he was given a name of ad-hoc workman, which is unfair labour practice

and is well covered within four corners of Item 10 Schedule-V of the I.D. Act, which reads as follows:-

â€œTo employ workmen as â€œbadlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status

and privileges of permanent workmen.â€

18. Learned counsel for the respondent/workman has also submitted that the procedure adopted by the petitioner/Management in the name of

appointment, re-appointment and extension, was an eye wash, with the sole motive to evade the legal liabilities. The petitioner/Management was guilty

of an unfair labour practice, by getting a permanent work done for years together by appointing respondent/workman in the name of ad-hoc workman.

The action of terminating the services of the respondent/workman by the petitioner/Management on 22.12.2000 was neither legal nor justifiable.

Learned counsel also submitted that the action of the petitioner/Management was void ab-initio. It was as good as if no order for termination of

services of the respondent/workman was passed. He was appointed in a time scale of Rs.950-1400/- with built-in annual increments. This, by itself,

establishes that the intention of the petitioner/Management was to appoint the respondent/workman on regular basis; otherwise, he would not have

been appointed in time scale but would have been appointed on a consolidated salary. Learned counsel for the respondent/workman also submitted

that even otherwise after 22.12.2000, in place of the respondent/workman, some other persons were appointed in the same cadre and on the same

post.

19.Learned counsel for the respondent/workman has further submitted that there was a violation of Section 25-F of the I.D. Act and Rule 77 of the

Industrial Disputes Rules, hence the termination of services of the respondent/workman was void ab-initio.

20.There is no doubt that the workman was appointed on ad-hoc basis from time to time for a specific period as a Laboratory Attendant. The tenure

of appointment shows that the workman was appointed regularly for all the working days during the aforesaid period and generally there was a

service gap when there were holidays or vacations in the Institute. The appointment letters also clearly demonstrate that the workman was given pay

scale along with allowances admissible under the law. So far as regular appointment is concerned, there is no doubt that the University Non-Teaching

Employees (Terms and Conditions of Service) Rules-2013, under the Act, Statutes and Ordinances, under Ordinance XXII-D (in short â€œService

Rules-2013â€) are applicable and the petitioner is required to follow the law laid therein for the purpose of appointment of a regular staff in the

Institute/establishment.

21.The petitioner/Management has relied upon the judgment of Secretary, State of Karnataka and Others v. Umadevi and Others, (2006) 4

SCC 1. Learned counsel for the petitioner submitted that the petitioner/Management was/is bound to appoint non-teaching employees as per the

Service Rules, 2013 and the adherence to Article 14 and Article 16 of the Constitution of India is must in the process of public employment, in view of

law laid down in Umadevi (supra). However, learned counsel for the respondent/workman submitted that the Supreme Court in the aforesaid

judgment has only dealt with the matter of regularization of the services of the temporary employees and the matters of termination of the services

and unfair labour practices committed by the Management were not considered by the Supreme Court in that case. Learned counsel for the

respondent/ workman has further submitted that in the light of the I.D. Act, it has been held by the Labour Court that there is no hesitation to hold that

termination of service of an employee or workman by way of retrenchment without complying with the requirement of giving one month‟s notice or

pay in lieu thereof and compensation in terms of the Section 25-F (a) and (b), has the effect of rendering the action of employer as nullity and the

employee is entitled to continue in employment, as if his service was not terminated, hence, the judgment in the matter of Umadevi (supra) is also not

applicable at all to the facts of the present case.

22. I have perused the Service Rules-2013 which provides the full procedure for the appointment of the non-teaching employees. Rule 3 of Section-I

clearly provides that - â€œThese rules shall apply to the employees of the University/Colleges other than teachers of the University/Colleges, persons

appointed on contract, daily wage and ad-hoc basis and such other employees as may be specially exempted by the Executive Council.â€ Rule

4,Clause (vi) gives the definition of an employee, according to which â€

â€œemployeeâ€ means any person appointed by the University/College to any post in the University/College other than University/College teachers

and such other employees defined under Rule 3 of these Rules.â€

23. Rule 5 (b) and (c) of the said Rules provides the general condition of service for the posts, recruitment and appointments including qualification for

appointment, evidence, method of recruitment, recruitment by promotion, appointments etc. Rules 8, 9, 10, 11, 12 and 13 of Section-II explain the

probation and confirmation of an employee, seniority, temporary and permanent service, termination of service, retirement and resignation. Similarly,

later part of the Rules provide the procedure for the pay and allowances, increments, service counting for increments, pay during suspension, special

pay, personal pay, honorarium and fee etc. The Service Rules-2013 provide full fledge procedure for the appointment of University Non-Teaching

Employees and the terms and conditions thereof. It is submitted by the learned counsel for the petitioner/Management that in the case of

appointment of any person, these rules shall be applied to the employees of University/College, Teachers of the University/College and

appointment of daily wager on ad-hoc basis. It is also stated that the Rules provides the qualification for the appointment to the post in various cadres

in the University/College and the person should be medically fit and is required to produce medical certificate. Learned counsel for the

petitioner/ Management further submitted that these Rules also provide for the method of recruitment by direct appointment, promotion and by

appointment of employees borrowed from Government Departments and other Institutions. Learned counsel for the petitioner/Management has also

submitted that the Rules also provide the method of temporary appointment and the services of the temporary employee may be terminated by the

appointing authority under Rule 64 (iii) (a) & (b) or any higher authority of the University/ College, without assigning any reason.

24.In the light of aforesaid facts and submissions, it would be quite relevant to refer to the judgment in the matter of Gangadhar Pillai v.

Siemens Ltd, (2007) 1 SCC 533, wherein it was held as under:-

â€œ11. The Act was enacted not only for recognition of trade unions but also prevention of unfair labour practices. What is an 'unfair labour practice'

has been defined in Section 26 of the Act to mean all the practices listed in Schedules II, III and IV. Section 27 of the Act prohibits engagement of an

employee by any employer or union in any unfair labour practice. Section 28 provides for procedure for dealing with complaints relating thereto.

Schedule IV of the Act enumerates general unfair labour practices on the part of the employers. Clause 6 of Schedule IV of the Act reads as under:

â€œ6. To employ employee as ""badlis"", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status

and privileges of permanent employees.â€

12. The question as to whether an employee had intermittently been engaged as casual or temporary for a number of years is essentially a question of

fact. The issue as to whether unfair labour practices had been resorted to by the employer or not must be judged from the entirety of the

circumstances brought on records by the parties. Only because an employee has been engaged as a casual or temporary employee or that he had

been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of

depriving him of the status and privilege of a permanent employee. Unlike other statutes, the employer does not have any statutory liability to give

permanent status to an employee on completion of a period specified therein. What is, therefore, necessary to be considered for drawing an inference

in terms of the said provisions would be to consider the entire facts and circumstances of the case.

15. It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization of

his services and/ or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the

Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be

computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other

purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that

account, his services cannot be directed to be regularized. Direction to reinstate the workman would mean that he gets back the same status.

16. In Madhyamik Siksha Parishad, U.P. v. Anil Kumar Mishra and Others etc. [AIR 1994 SC 1638: (2005) 5 SCC 122], this Court has categorically

held:

â€¦..The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of

the provisions of the Industrial Disputes Act, 1947, importing the incidents of completion of 240 days' work. The legal consequences that flow from

work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present

situation by way of analogy. The completion of 240 days' work does not, under that law import the right to regularisation. It merely imposes certain

obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged

form here.

17. In M.P. Housing Board v. Manoj Shrivastava [(2006) 2 SCC 702], this Court held:

It is now well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularised in

service. (See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra; Executive Engineer, ZP Engineering Divn. v. Digambara Rao; Dhampur

Sugar Mills Ltd. v. Bhola Singh; Manager, Reserve Bank of India v. S. Mani and Neeraj Awasthi)

The learned senior counsel placed strong reliance upon a decision of this Court in Chief Conservator of Forests and Another v. Jagannath Maruti

Kondhare and Others [(1996) 2 SCC 293] wherein this Court was considering the question of appointment of a person in the social forestry services.

The Bench inter alia noticing the decisions of this Court in State of Haryana v. Piara Singh [(1992) 4 SCC 118] opined that they are entitled to

regularization of services. Piara Singh (supra) has since been overruled by a Constitution Bench of this Court in Secretary, State of Karnataka and

Others v. Umadevi [(2006) 4 SCC 1].

20. Yet again, reliance has been placed on Haryana State Electronics Development Corporation Ltd. v. Mamni [2006 5 SCALE 164 : (2006) 9 SCC

434] wherein having regard to the fact situation obtaining therein the action on the part of the employer to terminate the services of an employee on

regular basis and reappoint after a gap of one or two days was found to be infringing the provisions of Section 25-F of the Industrial Disputes Act.

This Court held:

In this case the services of the respondent had been terminated on a regular basis and she had been re-appointed after a gap of one or two days. Such

a course of action was adopted by the Appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947,

therefore, is not attracted in the instant case.

Unlike the Act, there is no provision for prevention of unfair labour practices under the Industrial Disputes Act. The view of the High Court as upheld

by this Court, merely negatived a contention that such appointment came within the purview of Section 2(oo)(bb) of the Industrial Disputes Act. This

Court noticed various decisions rendered by it as regards payment of backwages and in stead and place of reinstatement in service, compensation was

directed to be paid. In Buddhi Nath Chaudhary and Others v. Abahi Kumar and Others [(2001) 3 SCC 328] wherein again reliance has been placed

by the learned counsel, has no application in the facts and circumstances of this case. We, therefore, do not find any reason to differ with the findings

of the High Court.â€

25.In another case titled as Manager (Now Regional Director) RBI v. Gopinath Sharma and Anr., (2006) 6 SCC 221, it was held as under:-

â€œ15. Regional Manager, S.B.I. vs. Rakesh Kumar Tewari,

MANU/SC/0044/2006 (Ruma Pal & Dr. AR.Lakshmanan,JJ.) :

In the above case, there was no pleading that there is violation of Section 25G of the I.D. Act. Respondent No.1 raised no allegation of violation of

Section 25G of the I.D. Act in his statement of claim before the Labour Court. This judgment also refers to the judgment in Regional Manager, State

Bank of India vs. Raja Ram, (2004) 8 SCC 164, where this Court held:

â€žâ€¦.before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the badlis,

casuals and temporary workmen had been continued for years as badlis, casuals or temporary workmen, with the object of depriving them of the

status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not

allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is

frowned upon. Besides, it needs to be emphasized that for the practice to amount to unfair labour practice it must be found that the workmen had been

retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman. There is no

such finding in this case. Therefore, Item 10 in List I of the Fifth Schedule to the Act cannot be said to apply at all to the respondent's case and the

Labour Court erred in coming to the conclusion that the respondent was in the circumstances, likely to acquire the status of a permanent employee.‟

16. The Haryana State Agricultural Marketing Board vs. Subhash Chand & Anr., JT 2006(3) SC 393 :

â€žThis case relates to the disengagement of casual employees.

The question arose was as to whether the provisions of Section 25G are to be complied with. In this case, the respondent was appointed on

contractual basis by the appellant during paddy seasons on consolidated wages. Upon termination of the services, the respondent raised an industrial

dispute. The appellant took the stand that the respondent was employed only for 208 days during the previous year whereas the respondent contended

that he had worked for 356 days. The Labour Court held that the termination was violative of Section 25G of the I.D. Act and hence an unfair labour

practice.The appellant filed a writ petition against the decision of the Labour Court which was dismissed by the High Court.Setting aside the decision

of the Labour Court, the High Court held Fifth Schedule to the I.D. Act inapplicable and hence dispensing with the engagement of the respondent

cannot be said to be unwarranted in law.â€¦â€¦‟

17. Secretary, State of Karanataka and Ors. v. Umadevi and Ors, (2006) II LLJ 722 SC:

In Paragraphs 34 &35 of the above judgment, this Court held as under:

â€œ34. â€¦â€¦.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 is 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 rulesâ€¦..

35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc

basis, temporary basis or based on no process of selection as envisaged by the rules. This court has in various decisions applied the principle of equal

pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality

enshrined in our Constitution in the light of the Directive Principles in that behalf. But the acceptance of that principle cannot lead to a position where

the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to

treat them as permanent. Doing so would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing

complete justice in any cause or matter pending before this court, would not normally be used for giving the go-by to the procedure established by law

in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad

decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given.

Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment specifically

interdicted by the orders issued by the Executive. Some of the appointing officers have even been punished for their defiance. It would not be just or

proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the

Constitution of India permitting those persons engaged, to be absorbed or to be made permanent based on their appointments or engagements.

Complete justice would be justice according to law and though it would be open to this court to mould the relief, this court would not grant a relief

which would amount to perpetuating an illegality.â€

18. Manager, Reserve Bank of India, Bangalore vs. S. Mani & Ors. , (2005) 5 SCC 100:

In paragraphs 30 & 31 of the above judgment, this Court held as under:

â€œ30. In Range Forest Officer v. S.T.Hadimani ((2002) 3 SCC25) it was stated:

3.â€¦..In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that

the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but

this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year

preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court

or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof or receipt of salary or wages for 240 days

or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set

aside.“

31. In Siri Niwas, (2002) 8 SCC 400, this Court held:

13.The provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication. The general principles of it are, however,

applicable. It is also imperative for the Industrial Labour Court to see that the principles of natural justice are complied with. The burden of proof was

on the respondent workman herein to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment. In

terms of section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent

therefore are satisfied. Section 25-F postulates the following conditions to be fulfilled by an employer for effecting a valid retrenchment:

(i)one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;

(ii)payment of compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six

months.â€

26.It has been held in Madhya Pradesh Administration v. Tribhuban, (2007) 9 SCC 748, as under:-

â€œ8. We may notice that recently in Muir Mills Unit of NTC (U.P.) Ltd. v.S wayam Prakash Srivastava and Another [(2007) 1 SCC 491], a Bench

of this Court opined :

â€žWith regard to the contention of the respondents that in the present fact scenario retrenchment is bad under law as conditions under Section 6-N,

which talks about a reasonable notice to be served on an employee before his/her retrenchment, is not complied with; we are of the view that even

under Section 6-N the proviso states that ""no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the

termination of service"". In the present case on the perusal of the appointment letter it is clear that no such notice needs to be issued to Respondent

No. 1.The respondents had referred to many cases with regard to back wages to be paid to the retrenched workman. The learned counsel cited a

string of decisions of this Court in support of this contention. We are however not addressing this plea of the respondents as we have already

observed that Respondent 1 is not a workman under the Industrial Disputes Act, 1947 and the U.P. ID Act, 1947 and also that the retrenchment was

not illegal and therefore the question of back wages does not arise.“

9. We may also notice that in Uttranchal Forest Development Corporation v M.C. Joshi [2007 (3) SCALE 545], this Court held;

â€žAlthough according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving

at a finding that in terminating the services of the respondent, the provisions of Section 6N of the UP Industrial Disputes Act were contravened, we

will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of

reinstatement in services should have been granted. It is now well-settled by reason of a catena of decisions of this Court that, the relief of

reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors

are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay

in raising an industrial dispute is also a relevant fact."

In Haryana State Electronics Development Corporation vM amni [AIR 2006 SC 2427], this Court directed payment of compensation. Similar orders

were passed in North- Eastern Karnataka Rt. Corporation v. Ashappa [(2006) 5 SCC 137] and U.P. State Road Transport Corporation v. Man

Singh [(2006) 7 SCC 752].

In Man Singh (supra) it was held:-

â€ž7. The respondent admittedly raised a dispute in 1986, i.e. after a period of about 12 years, it may be true that in an appropriate case, as has

been done by the Labour Court, delay in raising the dispute would have resulted in rejection of his claim for back wages for the period during which

the workman remains absent as has been held by this Court in Gurmail Singh vs. Principal, Govt. College of Education. But the discretionary relief, in

our opinion, must be granted upon taking into consideration all attending circumstances. The appellant is a statutory corporation keeping in view the

fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would

be wholly unjust at this distance of time. i.e. after a period of more than 30 years, to direct reinstatement of the respondent in service. Unfortunately,

the Labour Court or the High Court did not consider these aspects of the matter.

8. Keeping in view the particular facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement

of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000 to

him.

Similar orders, we may place on record, have been passed by this Court in State of Rajasthan v. Ghyan Chand, State of MP vs. Arjunlal Rajak,

Nagar Mahapalika (now Municipal Corporation) v. State of U.P., and Haryana State Electronics Development Corporation Ltd. v. Mamni."

It was further held:

â€žThe legal position has since undergone a change in the light of a Constitution Bench decision of this Court in Secretary, State of Karnataka &O rs.

vs. Uma Devi (3) & Ors. [(2006) 4 SCC 1] wherein this Court held that 'State' within the meaning of Article 12 of the Constitution of India is under

a constitutional obligation to comply with the provisions contained in Articles 14 and 16 of the Constitution of India."

10.In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11A of the Industrial Disputes Act. It merely directed the

amount of compensation to which the respondent was entitled to, had the provisions of Section 25 F been complied with should be sufficient to meet

the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the

Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the

peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.

11.We, therefore, are of the opinion that keeping in view the peculiar facts and circumstances of this case and particularly in view of the fact that the

High Court had directed re-instatement with full back wages, we are of the opinion that interest of justice would be subserved if appellant herein be

directed to pay a sum of Rs. 75,000/- by way of compensation to the respondent. This appeal is allowed to the aforementioned extent.â€

27.It is to be borne in mind that the judgment passed in the matter of Umadevi (supra) relied upon by the Management wherein Constitution Bench of

the Supreme Court has taken the view that when recruitment of an employee is in derogation of the rules and regulations or the same is in violation of

statutory principles, no relief can be granted to such employees. However, in the case of Nihal Singh and Ors. v. State of Punjab and Ors., (2013) 14

SCC 65 it is held as under:-

â€œ36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a

decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State,

the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not

create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have

agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank

employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden.

Apparently no such demand has ever been made by the State. The result is â€" the various banks which avail the services of these appellants enjoy

the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that

neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance

with the Constitution. Umadevi‟s judgment cannot become a licence for exploitation by the State and its instrumentalities.

37.For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals

are accordingly allowed. The judgments under appeal are set aside.

38.We direct the State of Punjab to regularise the services of the appellants by creating necessary posts within a period of three months from today.

Upon such regularisation, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the

cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we

quantify the costs to Rs.10,000/- to be paid to each of the appellants.â€

28.Similar view appears to have been taken in Umrala Gram Panchayat v. Secretary MCD, (2015) LLK 449. In the said case also, it was found that

so called temporary or daily wager employees who were performing similar work and duties which were being performed by their regular

counterparts and they have been working for similar number of hours, there was lot of disparity in the salary of permanent employees vis-Ã -vis such

daily/casual employees. Supreme Court held the same to be unfair labour practice which belittles the doctrine of equality before law.

Supreme Court also distinguished the ratio of judgment in Umadevi (supra) by holding that provisions of Industrial Disputes Act and the powers

conferred upon the Industrial Labour Court under the Industrial Disputes Act were not at all under consideration before the Supreme Court in

Umadevi (supra).

29.In the case of ONGC Ltd. v. Petroleum CoalL abour Union, (2015) Lab. IC 2483 wherein the Supreme Court rejected plea of the Management

regarding non-following of due procedure while recruiting such casual or temporary employees. Plea of the Management for refusing regularization

was turned down by observing as under:

â€œ29. ……..even though due procedure was not followed by the Corporation for the appointment of the concerned workmen in the post of â€žwatch

and ward security, this does not disentitle them of their right to seek regularization of their services by the Corporation under the provisions of the

Certified Standing Orders, after they have rendered more than 240 days of service in a calendar year from the date of the memorandum of

appointment issued to each one of the concerned workmen in the year 1988. The alleged â€œpolicy decisionâ€ to appoint CISF personnel to the

security post is on deputation basis and cannot be called appointment per se. Whereas, the concerned workmen have acquired their right to be

regularized under the provision of Clause 2(ii) of the â€žCertified Standing Orders for Contingent Employees of the Oil and Natural Gas

Commission"…..

30. ……..the concerned workmen have clearly completed more than 240 days of services subsequent to the memorandum of appointment issued by

the Corporation in the year 1988 in a period of twelve calendar months, therefore, they are entitled for regularization of their services into permanent

posts of the Corporation as per the Act as well as the Certified Standing Orders of the Corporation.â€

In the above case also, reliance was placed by the Management in Umadevi (supra) and in para 26, it was held as under:-

â€œUmadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and

PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule

IV where the posts on which they have been working exist. Uma Devi cannot be held to have overridden the powers of the Industrial and Labour

Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfairla bour practice on the part of the employer under

Item 6 of Schedule IV is established.â€

30.Now, reverting back to the case in hand, the Labour Court vide its Award directed the reinstatement of the workman in the same post and position

with all consequential benefits and 40% of his back wages since 22.12.2000, till the date of his reinstatement in his services.

31.There is no doubt that the respondent/workman was appointed on ad hoc basis from time to time but he was not regularized. It has also come on

record that the workman was not engaged or appointed by following the rules and his engagement was not against the sanctioned post. The

respondent/workman admittedly has not produced any documents to show that he was appointed by the Institute as per the Statute and the Rules of

the Delhi University.

32.The respondent/workman has incorrectly stated in the Statement of Claim that he was interviewed by duly constituted Selection Committee on

25.10.1997 and was declared being selected. There is also nothing on record to substantiate that the Director told the workman, contrary to the

contention of the respondent/workman, that he was declared selected as an ad-hoc Laboratory Attendant and since the post was permanent, he

would be made permanent subsequently. It would be quite appropriate to go through the letter/Memorandum (Ref.No.1342) dated 10.11.1997,

the first letter/ Memorandum issued by the petitioner/Management for a period from 10.11.1997 to 23.12.1997, which reads as follows:

â€œWith reference to his application the undersigned is pleased to inform Mr. Prempal that he has been appointed as Laboratory Attendant purely on

ad-hoc basis at this Institute on a basic pay of Rs.950/- in the scale of Rs.950-1400/- p.m. plus usual allowances admissible under the University of

Delhi Rules in force from time to time.

1. Your ad-hoc appointment is from 10.11.1997 to 23.12.1997.

2.Your ad-hoc appointment is terminable to any time during the period without giving any notice or assigning any reasons.

3.The ad-hoc appointment will be further subject to:

i)production of attested and original certificates supporting his qualifications, age and experience.

ii)Production of certificate of fitness from a qualified medical practitioner.

4.If you accept the offer on the above terms and conditions please report for duty immediately.Kindly note that no TA will be allowed for

joining the Institute.â€

33. Similarly, all the other letters relating to ad-hoc appointment of the respondent/workman are also on the same lines. The last letter/ Memorandum

is dated 16.10.2000 whereby the respondent was appointed for a period from 16.10.2000 to 23.12.2000. The aforesaid letter/ Memorandum

demonstrates that the same was issued with reference to the application of the respondent/workman and the Director of the Institute informed the

respondent/workman that he has been appointed as Laboratory Attendant purely on ad-hoc basis in the petitioner-Institute on a basic pay of Rs.2,650/-

per month in the scale of Rs.2650-4000/- p.m. plus usual allowances admissible under the University of Delhi Rules in force from time to time. It was

also mentioned in the said letter/Memorandum that the ad-hoc appointment is terminable at any time during the period without giving any notice or

assigning any reasons. The first letter/Memorandum dated 10.11.1997 was issued by the petitioner to the respondent for a period from 10.11.1997 to

23.12.1997. This practice was continued by the petitioner/Management till 23.12.2000, when the last letter/Memorandum dated 16.10.2000 was

issued.

34.The facts in Umadevi (supra) are not applicable to the facts of the present case and the Management cannot take shield of the same, since, in that

case, the Supreme Court dealt with the matter of regularization of services of temporary employees. The matter of termination of services and unfair

labour practices was not considered by the Supreme Court in that case. Even otherwise, the aforesaid judgment, as discussed hereinabove, has not

given any right to the Management to indulge in unfair labour practice in any manner.

35.Learned counsel for the petitioner submitted and I also do agree with his submissions, since it is noticed and found that in some cases, the

Managements do appoint a person on the post in a substantive capacity against the sanctioned post for performing the work of a perennial nature on

temporary/ad-hoc basis for a fixed term, denying legitimate dues to such workman, in derogation of public policy and the law, for a long period. What

is a long period, depends on the facts and circumstances of each case.

However, ordinarily, three years" continuous service may be regarded as long period/service, as held in the case of Ramkhilawan v. State of

U.P.,1992 2 UP LBEC 892. Suddenly, it happens that his services are dispensed with after putting in continuous service of 7-8 years, arbitrarily and

illegally, without any complaint whatsoever and some other person is employed. In some cases, even the Management, while appointing a workman

for a fixed term on ad-hoc/temporary basis neither extends the period nor the workman is discharged, but the work is taken from him/her for years

together on payment of minimum wages, depriving him/her of their legitimate dues, which he/she is otherwise entitled to, in comparison to other

permanent employees of the establishment. It is also noticed that in some other cases, the workmen are appointed against the sanctioned posts in a

substantive capacity by the competent person, to whom the wages are paid from the funds of the establishment; the Management of such

establishment does not take any steps or actions for the appointment of regular employees and when the dispute arises, such establishment takes a

defence that such an appointed person was not holding the post in a substantive capacity or that he was not appointed against the sanctioned post or

that he was not engaged by a competent person/committee. Such a practice comes within the purview of unfair labour practice and required to be

deprecated and cannot be allowed to prevail. The Management/establishment cannot take benefit of its own wrongs and deprive the workman of his

legitimate right, protection and dues under the garb of aforesaid defence.

36. In Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116, it is held that for a limited period, employing a person on ad- hoc

or temporary basis is result negotiated by two unequal persons and the condition of service prescribed thereunder must receive such interpretation as

to advance the intendment underlying the Act and defeat the mischief. It is further held as under:-

â€œ23. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations.

The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created

that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the

present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes

and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the

initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put

unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the

wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years

together and that micro wages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood,

he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity,

the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy

of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the

specious and untenable grounds put forward by the employer - public or private.

42. Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social

context in which they work. That is why it was said in Authorised Officer, Thanjavur and another vs. S. Naganatha Ayyar and others, [(1979) 3

SCC 466], while interpreting the land reforms Act, that beneficial construction has to be given to welfare legislation. Justice KrishnaI yer, speaking for

the Court, made it very clear that even though the judges are ""constitutional invigilators and statutory interpreters"" they should ""also be responsive to

part IV of the Constitution being ""one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order"". The

Learned Judge made it very clear that when the Judges ""decode social legislation, they must be animated by a goal oriented approach"" and the

Learned Judge opined, and if I may say so, unerringly, that in this country ""the judiciary is not a mere umpire, as some assume, but an activist catalyst

in the constitutional scheme."" [Para 1, p. 468]

43. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother JusticeS inghvi about a disturbing contrary trend

which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalisation of economy.â€

37.Hence, the practice of appointing a workman on ad-hoc/temporary basis against the permanent post by an establishment for the perennial nature of

the work, to whom the salary was/is paid from the funds of the establishment continuously for years together and then terminating his/her services on

the ground that he was an ad-hoc or temporary employee, is a practice, which is not only against the public policy, but also against the statutes and

cannot be allowed by the Courts.

38.Now, reverting back to the facts of the present case. Learned counsel for the petitioner/Management submitted that as per the records of the

petitioner/Management, the respondent/workman had worked for 43 days in the year 1997, 230 days in 1998, 221 days in 1999 and 218 days in the

year 2000 and he has not worked for 240 days in any of the preceding years, hence, he is not entitled to any benefit or protection under Section 25 F

of the ID Act.

39. The petitioner/Management has also filed a chart at the time of hearing in the Court regarding computation of days of service in preceding 12

calendar months for the period 24.12.1999 to 23.12.2000 wherein it is disclosed that the workman had worked for 219 days during this period. Learned

counsel for the respondent/workman has also filed a chart regarding computation of days of service in preceding 12 calendar months showing that he

had worked for 316 days and also submitted that the workman worked for more than 240 days in the immediate preceding year before the termination

of his services and that his services were terminated without any notice or compensation in violation of Section 25 F of the ID Act. Learned counsel

for the respondent has stated that while computing the days of service in preceding 12 calender months, he has taken into consideration all

holidays/vacations which have been included in view of the judgment in 1986 (I) LLJ 127 (SC) titled as H.D. Singh v. Reserve Bank of India and

Others, while placing reliance upon para No. 11 onwards.

40. The Labour Court while appreciating the facts has held that the workman had relied upon at least 12 memoranda, i.e. appointment letters or

extension letters; the duration of these appointments show that the workman was appointed on the actual working days and was given a break in

services when there was a vacation in the respondent/Management and each time he was re-appointed on the very opening day of the Management-

Institute till the last working day preceding the next vacation. The Labour Court has also come to the conclusion and held that the termination of the

workman in the present matter was neither legal nor justified.

41.In Mohan Lal v. Bharat Electronics Limited, AIR 1981 SC 1253, the Supreme Court held that 240 days in a calendar year has to be counted

starting from the date of termination and then counting 12 months backwards and if the workman had worked for 240 days in the 12 months, by a

deeming fiction, the workman would be deemed to be in continuous service for one year. Following this judgment in Chhote Lal v. Regional Manager,

Bank of Baroda, 2009 (121) FLR 191 (All), the Allahabad High Court held that the Industrial Tribunal is required to calculate 240 days starting from

the date of termination and going backwards 12 months.

42.The break of one or two days in a service and/or when there was a vacation, and the workman was reappointed on the very opening day of the

Management till the last working day preceding the next vacation, has been held, time and again, totally illegal, unfair, unjust, oppressive and violative

of Articles 14 & 16 of the Constitution of India, 1950, and such a break amounts to unfair labour practice. It is a well-settled law that while computing

240 days in service in preceding 12 calendar months and while calculating the total number of working days, one has to take into consideration and

include all Sundays and other holidays, as also held in Mahendra v. Presiding Officer, Labour Court & Anr., 2004 (102) FLR 983.

43. The Labour Court has come to the conclusion that the impugned retrenchment of the workman by the Management is legally defective and it was

as good as there was no retrenchment at all. I do not find any ground to interfere in the findings of the Labour Court holding that duration of

appointments show that the workman was appointed on the actual working days and was given a break in service when there was a vacation in the

Management-Institute and each time he was reappointed on the very opening day of the Management-Institute till the last working day preceding the

next vacation and further holding that the action of terminating the service of the workman by the Management on 22.12.2000 was neither legal nor

justified. The Labour Court also observed that it was purely a mathematical game being played by the Management to get its work done regularly on

permanent basis without incurring a corresponding liability, and the duration of appointment of this workman shows that the nature of the work was

permanent rather than being of casual nature. The said observations being findings of facts recorded by the Labour Court, this Court cannot and

would not interfere with such findings in the exercise of writ jurisdiction wherein I otherwise do not find any flaw.

44.The Labour Court in the impugned Award has also held that the nomenclature given to the post of the workman and the procedure adopted by the

Management in the name of appointment, re-appointment and extension was an eye wash, with a sole motive to evade the legal liabilities. The

Management was guilty of an unfair labour practice by getting a permanent work done for years together by appointing the workman in the name of

ad hoc workman. The action of terminating the services of the workman by the Management on 22.12.2000 was neither legal nor justified and hence,

the same needs to be set aside.

45.Accordingly, the Labour Court while relying upon the judgments regarding violation of Section 25-F of the ID Act awarded the relief vide the

impugned award, holding that the workman is directed to be reinstated in the same post and position with all consequential benefits with 40% of his

back- wage since 22.12.2000 till the date of his reinstatement in his service.

46.The reliance of the Management upon the judgment of Umadevi (supra), here in this Court is misplaced. The Supreme Court dealt with the

matter of regularization of services of the temporary employees in this judgment. The matter of termination of services and unfair labour practices

committed by the Management was not considered by the Supreme Court in that case. This judgment cannot be used by the Management as a tool for

putting premium on their unlawful acts and/or on their unfair labour practices.

47. It is pertinent to mention here that the petitioner/Management during the proceedings moved an application under Section 151 CPC (CM No.

5502/2015) in this Court, as is evident from the proceedings dated 25.03.2015, seeking directions asking the respondent/workman to join the services

of the petitioner/Management, when the time was sought by learned counsel for the respondent/workman to file a reply and the matter was adjourned

to 12.05.2015. However, on 12.05.2015, reply to the aforesaid application was not filed and the matter was then adjourned to 18.09.2015. The

respondent/workman did not file reply to the aforesaid application and it is on record that the learned counsel for the respondent/workman had certain

reservations coupled with the findings of the Award. On the other hand, learned counsel for the petitioner/Management submitted that the Institute is

made to pay wages to the respondent/workman without any work and as such, the petition be disposed of. It is to be noted that the respondent did not

join the services of the petitioner/Management either before or after moving of the application under Section 151 CPC on behalf of the

petitioner/ Management or thereafter.

48. In view of the aforesaid discussions and the fact that though there was a failure on the part of the petitioner/Management to follow the law of the

land, however, I deem it appropriate that payment of adequate amount of compensation, in place of a direction to reinstate along with 40% back

wages, would subserve the ends of justice. In this regard, it would be quite relevant to refer to Ashok Kumar Sharma v. Oberoi Flight Services, AIR

2010 SC 502, where the Supreme Court has held as under:-

â€œ7. This Court in U.P. State Brassware Corporation Ltd. V. Uday Narain Pandey, JT 2005 (10) SC 344, held thus:

41. The Industrial Courts while adjudicating on disputes between the Management and the workman, therefore, must take such decisions which

would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial

Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically.

Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court

shall lose much of their significance.

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full

back wages, therefore, cannot be the natural consequence.

8. In the case of Sita Ram V. Moti Lal Nehru Farmers Training Institute, JT 2008 (3) SC 622, this Court considered the matter thus:

21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the

appellants in service.

22.Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its

operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where

the appellants could have been directed to be reinstated in service.

23.Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors

therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh

with the court for determination of such an issue.

24.This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in

service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684], M.P. Admn.

v. Tribhuban [(2007) 9 SCC 748] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353].

25.Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs.1,00,000 to each of the appellants,

would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no

order as to costs.

9. The afore-referred two decisions of this Court and few more decisions were considered by us in the case of Jagbir Singh v. Haryana State

Agriculture Marketing Board, JT 2009 (9) SCC 396, albeit in the context of retrenchment of a daily wager in violation of Section 25F of Industrial

Disputes Act who had worked for more than 240 days in a year and we observed thus:

7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was 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 long line of cases, this 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 to the prescribed procedure.

Compensation instead of reinstatement has been held to meet the ends of justice.

49.The interest of justice, hence, would be subserved, if the impugned Award of the Labour Court is modified by directing the payment of

monetary compensation to the respondent/workman in lieu of reinstatement with 40% of his back wages, considering the violation of the provisions of

the I.D. Act, 1947, including unfair labour practices adopted by the petitioner/Management, and also keeping in view of the fact that the

workman was offered employment by the Management, as discussed hereinabove, by way of an application (CM No. 5502/2015) filed under

Section 151 CPC, reply thereto was neither filed by the workman/ respondent, nor any willingness nor any readiness was shown by him to join

the job, as well as taking into consideration the nature and tenure of the employment of the workman and the fact, as stated that the last drawn

salary/minimum wages and revised pay from time to time has been paid to the workman/respondent from 07.05.2011 till the filing of the aforesaid

application in the Court. Accordingly, in the interest of justice, I deem it appropriate to grant a compensation of Rs.1,50,000/- to the respondent/

workman. Ordered accordingly. The petitioner/Management is directed to make the said payment without any deduction of the amount already paid to

the respondent/workman within six weeks from today, failing which the same shall carry an interest @ 10% p.a.

50.Thus, the petition filed by the petitioner/Management being W.P. (C) No.8502/2011 is disposed of in the aforesaid terms. CM No.5502/2015 is also

disposed of.

51.In view of the above, the petition being W.P. (C) No.440/2014 filed by the respondent/workman is dismissed with no order as to costs