Before M. M. Kumar & Ritu Bahri, JJ.

KARAMBIR,—*Appellant*

versus

HARYAN URBAN DEVELOPMENT AUTHORITY AND ANOTHER,—*Respondents*

LPA 536 OF 2010 in
C.W.P. No. 13538 of 2008

8th December, 2010

Constitution of India, 1950—Arts. 14, 16 and 226—Labour Court ordering reinstatement of workman with continuity of service and 50% back wages—Single Judge setting aside award of Labour Court holding that appointment of workman was not in accordance with statutory rules—Management failing to raise any pleading, evidence or argument before Labour Court to conclude that initial appointment of workman was in contravention of Articles 14 and 16(1)—No mitigating circumstances in favour of management to mould relief other than the relief of reinstatement—Appeal allowed, judgment of Single Judge set aside while restoring award of Labour Court.

Held, that no pleadings, evidence or any argument was raised before the Labour Court by the management-respondent No. 1 to conclude that the initial appointment of the workman-appellant was in contravention of the equality clause as enshrined under Articles 14 and 16(1) of the Constitution. Moreover, the learned Single Judge has not kept in view the parameters laid down for exercising certiorari jurisdiction by the High Court under Article 226 of the Constitution. Even otherwise we do not find any mitigating circumstances in favour of the management-respondent to mould the relief other than the relief of reinstatement.

(Para 3)

S. K. Verma, Advocate, *for the appellant.*

Mrs. Neena Madan Advocate, *for respondent No. 1.*

M. M. KUMAR, J.

(1) The instant appeal under Clause X of the Letters Patent is directed against the judgment dated 4th February, 2009, rendered by the learned Single Judge setting aside the award dated 2nd April, 2003 passed by the Labour Court holding that the workman-appellant is entitled to continuity of service with 50% back wages from the date of demand notice i.e. 1st August, 1995. The basic reason for the aforesaid view is evident from the impugned order which has been passed by the learned Single Judge and the relevant portion of the same is reproduced as under :—

> "Counsel for the petitioner contends that even if the finding which has been recorded by the Labour Court is accepted, the respondent-workman had only worked about one year with the petitioner and, therefore, he would not be, in any case, entitled to reinstatement in service but at the most would be entitled to compensation for the said period of one year. He contends that it is an admitted position that the respondent-workman was appointed on daily wage basis, without complying with the statutory provisions governing his service. He further contends that there is clear violation of Articles 14 and 16 of the Constitution of India in the appointment process and since the appointment of the respondent-workman not in accordance with the statutory rules on a public post he is not entitled to reinstatement in service in the light of Division Bench judgment of this Court in the case of **State of Haryana** *versus* **Ishwar Singh and another,** 2008 (3) S.C.T. 788. The Division Bench of this Court has held that a daily wage employee even in case there is non-compliance of the Act and there is violation of Sections 25-F and 25-H, is not entitled to reinstatement but would be entitled to compensation. In the said judgment also, the workman has been granted compensation."

(2) We have heard learned counsel for the parties at considerable length and are of the view that the findings recorded by the learned Single Judge to set aside the order of reinstatement and back wages, is wholly without merit. A similar controversy has been raised before Hon'ble the

Supreme Court in the case of **Harjinder Singh** *versus* **Punjab State Warehousing Corporation (1).** In the said case, this Court had set aside the award of the Labour Court on the ground that the provisions of Articles 14 and 16 (1) of the Constitution were not complied with when the workman-Harjinder Singh entered into service. Taking notice of the aforesaid situation, their Lordships' of Hon'ble the Supreme Court in para 14 of the judgment has observed as under :—

> "14. .....the learned Single Judge substituted the award of reinstatement of the appellant with compensation of Rs. 87,582 by assuming that appellant was initially appointed without complying with the equality clause enshrined in Articles 14 and 16 of the Constitution of India and the relevant regulations. While doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the appellants's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the issue whether reinstatement should be denied to the appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in prepetuation of illegality. This being the position, the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over trun an otherwise well reasoned award passed by the Labour Court and deprive the appellant of what may be the only source of his own sustenance and that of his family."

(3) When the facts of the present case are examined in the light of the aforesaid observations, it is evident that no pleadings, evidence or any argument was raised before the Labour Court by the management-respondent No. 1 to conclude that the initial appointment of the workman appellant was in contravention of the equality clause as enshrined under Articles 14 and 16(1) of the Constitution. Moreover, the learned Single

(1) (2010) 3 S.C.C. 192

Judge has not kept in view the parameters laid down for exercising certiorari jurisdiction by the High Court under Article 226 of the Constitution, as laid down by Hon'ble the Supreme Court in the cases of **Syed Yakoob** *versus* **K. S. Radhakrishnan (2)** and **Surya Dev Rai** *versus* **Ram Chander Rai (3).** Even otherwise we do not find any mitigating circumstance in favour of the management-respondent to mould the relief other than the relief of re-instatement. It is well settled that reinstatement is the rule whereas refusal is an exception. Such like exception could be where a workman is to work on a post or office of trust and confidence or the post is not in existence etc. No such circumstances have been pointed out by the learned counsel for the management-respondent No. 1.

(4) As a sequel to the above discussion, this appeal succeeds and the judgment rendered by the learned Single Judge is set aside. The award of the Labour Court is restored. The management-respondent No. 1 is directed to reinstate the workman-appellant in service immediately without further delay.

R.N.R.