A STATE OF HARYANA AND ORS.

v.

DEVI DUTT AND ORS.

NOVEMBER 24, 2006

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Constitution of India, 1950:

Article 226—Findings of fact recorded by Labour Court—Judicial C *review of—Legal principles—Reiterated—On facts, no interference called for—Further, High Court ought not to have entertained additional affidavit without assigning cogent reason therefor—Practice and Procedure—Labour Law.*

D *Labour Law:*

Industrial Disputes Act, 1947:

ss. 25-F and 25-G—Daily wagers—Discontinuation of services—Labour Court holding that workmen were not in continuous service for 240 days for E *a period of 12 months preceding the order of termination—Provisions of ss. 25-F and 25-G, not infringed—High Court in writ petition setting aside the award—Held, High Court should not have interfered with the findings of fact arrived at by Labour Court—Order of High Court set aside—Constitution of India—Article 226.*

F **The appellant-State Government, in terms of a judgment of the High Court* laid down terms and conditions for regularization of daily wagers, as a result whereof services of the respondents were discontinued. On the industrial disputes being raised, the Labour Court held that the workmen having not been in continuous service for a period of 240 days during a period of 12 months preceding the order of termination, provisions of ss.25-F and** G **25-G were not infringed. Writ petitions were filed by the respondent before the High Court wherein additional affidavits were also filed. The High Court held that the appellants having not disputed that the workmen were engaged on daily wages from February 1993 to January 1996, the impugned awards could not be sustained; and directed the matter to be remitted to the Labour**

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Court. Aggrieved, the State Government filed the present appeal. A

Allowing the appeal, the Court

HELD: 1. The High Court erred in passing the impugned judgments and exceeded its jurisdiction. It failed to apply the well known legal principles of judicial review. Before the Presiding Officer, Labour Court, evidences were B **adduced by the parties on the basis whereof the Labour Court, arrived at a definite conclusion that the respondents had not been in continuous service for a period of 240 days within 12 months preceding the date of termination and were disengaged keeping in view the exigency of work. It was found as of fact that no junior had been retained. Furthermore, the appellants acted *bona fide* in terms of the directions issued by the High Court*. The orders of** C **termination were passed in terms of the policy decision. The High Court ordinarily, without appreciating as to whether on the well known legal principles of judicial review, the findings of labour court require interference, should not have interfered with the said findings of fact.**

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***Kulbhushan v. *State of Haryana,* (1996) 1 RSJ 775, referred to.**

2. The High Court also ought not to have entertained an additional affidavit without assigning any sufficient or cogent reason therefor. The parties adduced their evidences before the Industrial Court. Why could they not bring on record any other evidence before the Labour Court, was not E **explained. The contentions raised before the High Court for the first time in the additional affidavits filed before it, were also not admitted by the appellants herein. Therefore, the impugned judgments cannot be sustained and are set aside. [517-E-F; 518-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5184 of 2006. F

From the Judgment and Order dated 24.2.2004 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. Nos. 6135,6137 and 6136/2002.

Ajay Siwach and T.V. George for the Appellants.

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Harish Chandra and Goodwill Indeevar for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

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A Respondents herein were recruited on daily wages. They were muster-roll employees. Pursuant to a decision of the High Court in *Kulbhushan* v. *State of Haryana* [1996] 1 RSJ 775, engagement of daily wagers was purported to have been banned in terms whereof the State issued instructions on 9.1.1996 to all the heads of departments, forbidding continuance of daily wagers on muster-roll. The work was directed to be carried out by workmen, B whose services were to be regularised on fulfilment of terms and conditions of the policy laid down therefor. In terms of the said policy decision, the services of the respondents were terminated. Industrial Disputes were raised alleging violation of different provisions of Industrial Disputes Act, 1947 ('the Act'). Before the Labour Court, both the parties adduced their respective C evidences. By reason of three different Awards, the Presiding Officer, Labour Court arrived at a definite finding that the workmen having not been in continuous service for a period of 240 days during a period of 12 months preceding the order of termination, the retrenchment of the workmen was not violative of Section 25F of the Act. It was further held that the provisions of Sections 25G thereof had also not been infringed.

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Writ petitions were filed by the respondents aggrieved by and dissatisfied therewith. In the said proceedings, additional affidavits were filed. The High Court reversed the findings of fact arrived at by the Presiding Officer, Labour Court holding that as the appellants had not denied or disputed that the E workmen were engaged as daily wagers from February, 1993 to January, 1996, the impugned Awards could not be sustained. The matters were directed to be remitted to the Labour Court.

The State is, thus, before us.

F Mr. Ajay Siwach, learned counsel appearing on behalf of the appellants would submit that the High Court committed a manifest error in setting aside the findings of fact arrived at by the Labour Court.

Mr. Harish Chandra, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that the Labour Court having G not considered the materials on record in their proper perspective, the High Court cannot be said to have committed any error in reversing the said findings. Our attention was also drawn to the following statements made in the counter affidavit in this behalf :

"....If the muster roll for the months of February, 1995, March, 1995

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and June, 1995 are taken into consideration, the working days as reflected by the workman as 21½, 30 and 24 are taken into consideration, a period of 75½ days is required to be added and after adding 75½ days, the total number of days comes to 264½ days which is more than 240 days. The respondent had also worked in January, 1996 for 21 days, thus total number of days comes to 285½ days."

Before the Presiding Officer, Labour Court, evidences were adduced by the parties. The Labour Court, on the basis of the materials placed before it, arrived at a definite conclusion that the respondents herein had not been in continuous service for a period of 240 days within 12 months preceding the date of termination.

The High Court ordinarily should not have interfered with the said finding of fact. We, although, do not mean to suggest that the findings of fact cannot be interfered with by the superior courts in exercise of their jurisdiction under Article 226 of the Constitution of India, but the same should be done upon application of the well known legal *principles such as:* (1) when it is perverse; (2) when wrong legal principles have been applied; (3) when wrong questions were posed; (4) when relevant facts have not been taken into consideration; or (5) the findings have been arrived at on the basis of the irrelevant facts or on extraneous consideration.

The High Court ordinarily also ought not to have entertained an additional affidavit without assigning any sufficient or cogent reason therefor. The parties adduced their evidences before the Industrial Court. Why could they not bring on records any other evidence before the Labour Court, was not explained. The contentions raised before the High Court for the first time in the additional affidavits filed before it, were also not admitted by the appellants herein.

We, therefore, are of the opinion that the High Court erred in passing the impugned judgments. Submission of Mr. Harish Chandra that this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India, cannot be accepted. The High Court, in our opinion, has exceeded its jurisdiction. It failed to apply the well known legal principles of judicial review. Furthermore, the appellants acted *bona fide.* The orders of termination were passed in terms of its policy decision. The Presiding Officer, Labour Court categorically opined that the workmen had been disengaged keeping in view the exigency of work, which had been mentioned in the

A muster-roll itself. It was found as of fact that no junior had been retained. The State also acted in terms of the directions issued by the High Court. Whether such directions were legal or illegal, is not a matter which fell for consideration before the Labour Court, but, there cannot be any doubt whatsoever that the appellants acted *bona fide.*

B For the reasons mentioned, the impugned judgments cannot be sustained, which are set aside. The appeal is allowed. No costs.

R.P. Appeal allowed.