



2026:DHC:6015



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 20th April, 2026**Date of Decision: 28th July, 2026**Uploaded on: 28th July, 2026*

+ W.P.(C) 530/2006

D.T.C.

.....Petitioner

Through: Ms. Manisha Tyagi, Mr. Ankur
Gupta, Advs.

versus

SHAMSHER SINGH

.....Respondent

Through: Mr. Anil Mittal, Mr. Atul Chauhan,
Advs.**CORAM:****HON'BLE MS. JUSTICE SHAIL JAIN****JUDGMENT****SHAIL JAIN, J.**

1. The present Petition has been instituted under Article 226 of the Constitution of India assailing the Award dated 02nd February, 2005, passed by the learned Presiding Officer, Industrial Tribunal-III, Karkardooma Courts, Delhi, in Industrial Dispute (I.D.) No. 28/04. By the impugned Award, the learned Tribunal held that the Respondent/Workman was entitled to regularisation with effect from his initial date of appointment, i.e., 02nd March, 1982, along with all consequential service benefits. Aggrieved by the said Award, the Petitioner/Delhi Transport Corporation (DTC) has preferred the present Petition.



BRIEF FACTS

2. The brief factual background leading to the filing of the present Petition is set out hereunder.

a. The Petitioner-Corporation is a statutory body constituted under the provisions of the Road Transport Corporations Act, 1950 and is governed by its own Rules and Regulations, which, according to the Petitioner, possess statutory force by virtue of the Delhi Road Transport Laws (Amendment) Act, 1971.

b. The Respondent-Workman, Shri Shamsher Singh, was appointed as a Retainer Crew Driver on 02nd March, 1982, on a daily wage basis of Rs. 40.15/- (Rupees Forty and Fifteen paise only) per month. The service conditions governing Retainer Crew Drivers contemplated their absorption into the monthly-rated temporary establishment of Drivers and Conductors on the basis of merit, seniority, conduct, performance and availability of vacancies. The said conditions further provided that their services could be dispensed with without notice and without assigning any reason.

c. On 06th July, 1983, the services of the Respondent were dispensed with on account of his alleged involvement in a fatal accident during the course of duty. Aggrieved thereby, the Respondent raised an industrial dispute, which was referred for adjudication by the Government of NCT of Delhi in the year 1985. By an Award dated 01st March, 1999, passed in I.D. No. 141/85, the learned Industrial Tribunal directed the reinstatement of the Respondent with continuity of service and 50% back wages.



d. The Petitioner challenged the said Award by way of W.P.(C) No. 9865 of 1999/2000 before this Court. The said writ petition was dismissed *vide* Order dated 31st January 2001. Pursuant thereto, the Respondent was re-engaged as a Retainer Crew Driver on a daily wage basis *vide* letter dated 18th March, 2002 and was also paid 50% back wages in compliance with the aforesaid Award.

e. Thereafter, through his Union, the Respondent raised a further industrial dispute seeking regularisation on the post of Driver with effect from 01st June, 1982. Upon failure of conciliation proceedings, the Secretary (Labour), Government of NCT of Delhi, referred the following dispute for adjudication *vide* order dated 22nd January, 2004:

“Whether the demand of Shri Shamsher Singh for regularisation on the post of Driver with effect from 01.06.1982 was legal and justified and, if so, to what directions were necessary in this respect.”

f. During the pendency of the proceedings, the Respondent was placed on the monthly rates of pay with effect from 01st June, 2004, along with other Retainer Crew Drivers.

g. Before the learned Tribunal, the Respondent sought regularisation on the post of Driver with effect from 01st June, 1982, along with all consequential benefits, including arrears and difference of wages, promotional benefits, and other monetary as well as non-monetary entitlements. The Petitioner opposed the claim, contending, *inter alia*, that the claim was devoid of any cause of action, that the Respondent had suppressed material facts, that his services had been dispensed with in 1983 following a fatal accident,



and that the earlier Award merely granted reinstatement with continuity of service and 50% back wages without conferring any right to regularisation.

h. The Petitioner further pleaded that the Respondent's leave record reflected 93 days of Leave Without Pay between 01st June 2004 and 31st May 2005, and the Respondent's probation period as a Retainer Crew Driver was extended up to 31st May, 2005.

i. Upon consideration of the material placed on record, including the affidavit of Shri K.D. Sobti (Depot Manager of the Petitioner), the learned Industrial Tribunal passed the impugned Award dated 02nd February, 2005 in I.D. No. 28/04, holding that the Respondent was entitled to regularisation with effect from the date of his initial appointment, i.e., 02nd March, 1982, along with all consequential benefits.

“10. However, the perusal of the affidavit does not show as to how the workman is not entitled to be regularized w.e.f. from the date of his initial appointment despite order of Labour Court in his favour as given in I.D. No. 141/05. It is no justification as to why he was not regularized find eligible from the date of his initial appointment and has been only regularized from 1.6.2004, even though his juniors were regularized from the date of their initial appointment.

11. Under these circumstances, when the workman/claimant has to be treated in continuous service of the management w.e.f. date of his initial appointment i.e. 2.3.82 and has also been granted the benefit of continuity of service by the award given by Shri G.P. Mittal, PO IT-III: Tis Hazari Courts, Delhi, in I.D. No. 141/05, the management cannot discriminate this workman which his juniors in the absence



of any other relevant material which has not been brought on court record to justify such discrimination.

12. I have no hesitation but to hold that the workman is entitled to be regularized w.e.f. the date of his initial appointment i.e. 2.3.82 in view of an award given in his favour in I.D. No. 141/05 as mentioned in the affidavit of Shri K.D. Sobti filed today. Thus, the reference made to this tribunal vide order No. 24(4019)/2003, Lab. 732-36 dated 23.1.2004, is answered in favour of the workman. It is directed that the regularization of the workman would be considered from the date of initial appointment and would be provided with all consequential benefits.”

j. Aggrieved by the aforesaid Award, the Petitioner has preferred the present Writ Petition seeking, *inter alia*, the following reliefs:

“i. Issue a writ in the nature of certiorari quashing the impugned Award dated 2.2.2005 in I.D. No. 28/04 passed by Sh. M. C. Garg, Presiding Officer, Industrial Tribunal No. III, Karkardooma, Delhi; And/Or

ii. Pass such order or orders as your lordship may fit and proper in the interest of justice.”

k. It may be noted that, during the pendency of the present proceedings, this Court, vide Order dated 27th August, 2006, stayed the operation of the impugned Award. Consequently, C.M. Appl. No. 454/2006, filed by the Petitioner seeking interim stay of the operation of the impugned Award, stood disposed of.

l. It is further pertinent to note that the Respondent attained the age of superannuation on 10th March, 2015.

3. The Respondent, on the other hand, has opposed the present Writ Petition on the following grounds-



- a. The Respondent has submitted that the Petition is not maintainable in law. It is contended that the impugned Award dated 02nd February, 2005 is legal, justified and based on a proper appreciation of the facts, evidence and applicable law. The Respondent submits that he is entitled to seniority and consequential benefits along with his co-employees, including those who were appointed along with him and subsequently regularised, and that the learned Tribunal has rightly recognised such entitlement.
- b. On merits, the Respondent has asserted that the Petitioner's reliance upon the termination of his services in 1983 is misconceived. It is submitted that he had already been acquitted in relation to the alleged fatal accident and that the legality of his termination had already been adjudicated in the earlier industrial dispute, wherein reinstatement with continuity of service and 50% back wages was granted. The challenge to the said Award having been dismissed by this Court, the issue stood concluded and could not be reopened.
- c. The Respondent has specifically disputed the Petitioner's reliance upon his leave record and the alleged 93 days of Leave Without Pay. It is contended that such subsequent events have no bearing on the validity of the impugned Award, which had already been passed on 02nd February, 2005, and are therefore wholly irrelevant for the purposes of the present challenge.
- d. Similarly, the Respondent has denied the Petitioner's reliance on the extension of his probation period up to 31st May, 2006, contending that once his rights stood recognised under the earlier



Award and the impugned Award, the Petitioner could not defeat or dilute those accrued rights by subsequently placing him on probation or extending the same.

4. In addition to the above, the principal grounds urged by the Petitioner in respect of the reliefs claimed in the present Petition are as follows:

a. The Petitioner primarily contends that the learned Tribunal erred in directing regularisation of the Respondent with effect from 02nd March, 1982, despite there being no such direction in the earlier Award dated 01st March, 1999, passed in I.D. No. 141/85. According to the Petitioner, the said Award merely granted reinstatement with continuity of service and 50% back wages and did not confer any right to regularisation.

b. It is further submitted that the Respondent was engaged as a Retainer Crew Driver on daily wages and, upon reinstatement, was re-engaged in the same capacity. The subsequent placement of the Respondent on monthly rates of pay with effect from 01st June, 2004, did not amount to regularisation. Under the applicable service conditions, absorption into the monthly-rated establishment was subject to merit, seniority, conduct, performance and availability of vacancies. The Respondent, therefore, could not claim regularisation as a matter of right.

c. The Petitioner also contends that the learned Tribunal misconstrued the effect of continuity of service and the provisions of Section 25-F and Section 2(o) of the Industrial Disputes Act, 1947. It is submitted that a finding that termination was illegal, or a direction granting reinstatement with continuity of service, does not *ipso facto*



result in regularisation or confer permanent status upon a workman. At best, reinstatement restores the workman to the position held at the time of termination. In support of the said submission, reliance has been placed on the decisions of the Supreme Court in “*Allahabad Bank v. Prem Singh*” 1996 (10) SCC 597 and “*Madhyamic Siksha Parishad, Uttar Pradesh v. Anil Kumar Mishra & Ors.*” 1994-II-LLJ-977 (SC), wherein it was held that non-compliance with the Industrial Disputes Act or completion of 240 days of service does not, by itself, create a right to regularisation.

d. The Petitioner thus submits that the impugned Award is contrary to settled principles governing regularisation, suffers from errors of law and fact, and is consequently liable to be quashed.

5. *Per contra*, the Respondent controverted the grounds urged by the Petitioner and submitted as follows:

a. In response to the Petitioner's contention that the earlier Award dated 01st March, 1999, did not confer any right to regularisation, the Respondent has submitted that the learned Tribunal duly considered the said Award and rightly granted the relief in question. It is further contended that the Petitioner's challenge to the earlier Award had already been rejected by this Court.

b. As regards the Petitioner's contention that the Respondent continued to remain a daily-rated Retainer Crew Driver and that his placement on monthly rates of pay did not amount to regularisation, the Respondent has submitted that the learned Tribunal correctly appreciated the applicable service conditions and rightly held him



entitled to regularisation and consequential benefits. It is further contended that employees junior to him had already been granted similar benefits and that the subsequent probationary orders could not defeat his accrued rights.

c. In answer to the Petitioner's reliance upon Section 25-F of the Industrial Disputes Act, 1947 and the legal effect of continuity of service, the Respondent has maintained that the learned Tribunal correctly appreciated the applicable law and rightly concluded that he was entitled to regularisation and parity with his co-employees.

d. With regard to the judgments relied upon by the Petitioner, the Respondent has contended that the same are distinguishable on the facts and have no application to the present case.

e. The Respondent has, therefore, maintained that the impugned Award is legal, justified and based on a proper appreciation of the facts and law, and does not warrant interference by this Court.

ISSUE INVOLVED

6. In light of the facts and grounds noted above, the sole issue that arises for consideration before this Court is whether the impugned Award dated 02nd February, 2005, passed by the learned Presiding Officer, Industrial Tribunal-III, Karkardooma Courts, Delhi, in Industrial Dispute (I.D.) No. 28/04 suffers from any illegality, perversity or material irregularity warranting interference under Article 226 of the Constitution of India.



SUBMISSIONS OF THE PARTIES

7. Moving on, apart from the grounds expressly pleaded in the Writ Petition, the Petitioner, through its written submissions, has further elaborated upon certain aspects of its challenge to the impugned Award.

(i) Respondent's Failure to Challenge the Reinstatement and Subsequent Service Orders.

a. The Petitioner has laid considerable emphasis on the fact that the Respondent never challenged the order dated 18th March, 2002, whereby he was reinstated pursuant to the Award dated 01st March, 1999. According to the Petitioner, the said order specifically restored the Respondent to service as a Retainer Crew Driver on a daily wage basis and not as a regular Driver. It is contended that the reinstatement order attained finality and continued to govern the Respondent's service status.

b. The Petitioner further submits that the Respondent also did not challenge the order dated 01st June, 2004, whereby he was brought on monthly rates of pay along with other Retainer Crew Drivers. Similarly, no challenge was laid to the subsequent order extending his probation up to 31st May, 2006.

c. According to the Petitioner, these orders attained finality and clearly reflected the Respondent's service status, which was inconsistent with his claim for retrospective regularisation from the date of initial appointment.

(ii) Distinction Between Regularisation, Absorption, Probation, Confirmation and Permanency.



a. The Petitioner has further contended that the learned Tribunal failed to appreciate the distinction recognised in service jurisprudence between regularisation, absorption, probation, confirmation and permanency.

b. According to the Petitioner, regularisation merely relates to the manner in which an employee is brought into the regular stream of service and cannot, by itself, be equated with confirmation or permanence. It is submitted that even where an employee is regularised, the acquisition of permanent status remains subject to the fulfilment of the applicable service requirements, including successful completion of probation and confirmation in accordance with the governing rules.

c. It is, therefore, contended that regularisation does not automatically confer permanent status and that permanence would still require confirmation in accordance with the applicable service rules. According to the Petitioner, the learned Tribunal erred in treating regularisation as synonymous with permanence and in granting consequential benefits on that basis.

(iii) Effect of Reinstatement and Continuity of Service

a. A further submission advanced by the Petitioner pertains to the legal effect of the Award dated 01st March, 1999, granting reinstatement with continuity of service.

b. According to the Petitioner, the settled position in law is that an order of reinstatement merely restores a workman to the status which he held at the time of termination and does not confer any higher or different status. It is contended that the Respondent was serving as a



daily-rated Retainer Crew Driver when his services were dispensed with in 1983 and, therefore, reinstatement could only restore him to that very position.

c. The Petitioner submits that the expression "continuity of service" could not have been construed by the learned Tribunal as conferring an entitlement to regularisation from the date of initial appointment. According to the Petitioner, continuity of service is not synonymous with regularisation and does not automatically carry with it all service benefits.

d. It is argued that even where continuity of service is directed, the same ought ordinarily to operate only for limited purposes such as pensionary and retirement benefits and cannot, without a specific direction, be extended to confer benefits such as regularisation, seniority, promotions, increments or other incidents of permanent service.

e. The Petitioner thus contends that neither the direction of reinstatement nor the grant of continuity of service could, by themselves, elevate the Respondent to the status of a regular employee or create an independent right to regularisation. Consequently, the learned Tribunal is stated to have erred in proceeding on the basis that the earlier Award entitled the Respondent to regularisation with effect from his initial appointment.

(iv) Interpretation of Clause (6) Governing Retainer Crew Drivers

a. The Petitioner has placed considerable reliance on Clause (6) of the terms and conditions governing the engagement of Retainer Crew Drivers. It is submitted that the said provision specifically



contemplated absorption of a Retainer Crew Driver into the monthly-rated temporary establishment of Drivers only based on merit, seniority, conduct and performance.

b. According to the Petitioner, absorption into the monthly-rated establishment was neither automatic nor a consequence of mere length of service. It was contingent upon satisfaction of the prescribed criteria and consideration of the employee's overall service record.

c. On this basis, the Petitioner contends that the learned Tribunal erred in treating the Respondent's placement on monthly rates of pay as tantamount to regularisation, particularly when the governing service conditions envisaged a separate process of absorption based on the aforesaid parameters. The Petitioner thus maintains that the Respondent was never formally regularised in accordance with the applicable service conditions.

(v) Judicial Precedents Relied Upon

a. In support of the aforesaid submissions, the Petitioner has placed reliance upon certain judicial authorities in addition to those cited in the Writ Petition.

b. The Petitioner has relied upon the decision of the Supreme Court in *“Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others”*, (2013) 10 SCC 324 to contend that the grant of continuity of service does not necessarily result in the conferment of all consequential service benefits and that the scope and effect of such continuity must be determined in the context of the relief actually granted.



c. Reliance has also been placed upon the decision of the Delhi High Court in ***“Bhagwan Das and Others v. University of Delhi and Others”***, 2005 (1) SLJ 447 DELHI. The Petitioner submits that the said decision recognises the principle that a finding of illegality in termination on account of non-compliance with Section 25-F or other provisions of the Industrial Disputes Act, 1947 does not, by itself, confer a right to regularisation or permanent status. According to the Petitioner, the said judgment supports its contention that reinstatement and continuity of service cannot automatically be translated into a claim for retrospective regularisation.

d. The Petitioner has further relied upon the judgment of the Supreme Court in ***“Regional Manager, State Bank of India v. Mahatma Mishra”***, 2006 AIR SCW 5957, in support of its submission that reinstatement or continuation in service cannot, by itself, create a legal right to regularisation and that claims relating to permanent status must be independently established in accordance with law.

8. In response to the aforesaid contentions, the following submissions have been made on behalf of the Respondent.

a. The Respondent has contended that the relief of continuity of service granted under the Award dated 01st March, 1999, cannot be treated as a mere formality or notional declaration. According to the Respondent, once reinstatement with continuity of service and 50% back wages was directed and the said Award attained finality, he was required to be treated as having remained in service without interruption for all practical purposes. It is submitted that continuity of



service necessarily postulates an unbroken and uninterrupted service record and requires recognition of the employee's past service, notwithstanding the intervening period during which he remained out of employment on account of the illegal termination.

b. The Respondent submits that if regularisation is reckoned only from the date of reinstatement and not from the point at which he would otherwise have become entitled to such benefit, the direction granting continuity of service would be rendered ineffective. According to the Respondent, the very object underlying the grant of continuity of service is to place the employee, to the extent possible, in the same position in which he would have stood had the illegal termination never taken place.

c. The Respondent has further emphasised that treating him as a fresh entrant upon reinstatement would result in serious civil and service consequences. It is submitted that such an approach would place him below employees who were originally junior to him, thereby disturbing his position in the cadre. The Respondent contends that he would also suffer financial prejudice since his pay would be fixed at the level applicable to a fresh appointee rather than at the stage corresponding to his actual length of service.

d. The Respondent has additionally submitted that denial of the benefit of past service would adversely affect his retirement-related entitlements. According to the Respondent, if the period between removal and reinstatement is not treated as qualifying service, he would be deprived of the benefit of length of service for the purposes of gratuity, provident fund, pension and other retirement benefits.



e. It is further submitted that refusal to accord full effect to continuity of service would also result in denial of benefits dependent upon service tenure, including the benefits available under the Assured Career Progression (ACP) Scheme, annual increments and other service-related advancements. According to the Respondent, such consequences would effectively nullify the relief granted under the earlier Award and deprive him of the practical benefits flowing from the declaration that his termination was illegal.

f. In support of the aforesaid submissions, the Respondent has placed reliance upon the decision of this Court in “***Mahabir Prasad v. Delhi Transport Corporation***”, 2014 SCC OnLine Del 3757. The Respondent submits that the said decision recognises that where continuity of service is granted, the employee may be entitled to consequential service benefits, including notional increments, benefits under the Assured Career Progression Scheme and reckoning of the intervening period between removal and reinstatement for the purposes of retirement benefits. According to the Respondent, the said decision supports his contention that continuity of service must be given substantive effect and cannot be confined to a merely symbolic or technical benefit.

ANALYSIS AND REASONING

9. The Court has heard the learned Counsel for the respective parties and perused the record. Accordingly, this Court proceeds to determine the issues arising for consideration on the basis of the material available on record, the submissions advanced on behalf of the parties, the precedents relied upon,



and the settled principles of law laid down in a catena of decisions of the High Courts and the Hon'ble Supreme Court.

10. Before advertng to answering the issue framed in the present Petition, it is apposite to observe that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, while examining an Award passed by the Labour Court, is supervisory in nature and circumscribed in scope. It is well settled that the High Court does not act as an appellate authority over the findings returned by the Labour Court. Interference is warranted only where the Award suffers from patent illegality, perversity, jurisdictional error, or where material evidence has been ignored.

11. The Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan***, AIR 1964 SC 477, held that interference under certiorari jurisdiction is only justified where a tribunal acts in excess of jurisdiction or where its findings are based on no evidence.

12. Therefore, the High Court, in writ proceedings, does not re-examine or re-appreciate the evidence recorded by the Tribunal below, nor does it substitute its own view for that of the adjudicatory body. The award of the Labour Court can be set aside only if there is an error apparent on the face of the record.

13. So, while this Court remains conscious of the limitations inherent in writ jurisdiction, it is equally mindful that findings rendered in disregard of the settled legal principles, or the admitted evidence, cannot be permitted to sustain merely on considerations of judicial restraint.

14. To determine the controversy arising in the present Petition, the foremost question that falls for consideration is whether the learned Industrial Tribunal was justified in holding that the Respondent became



entitled to regularisation with effect from 02nd March, 1982 solely because the earlier Award dated 01st March, 1999 directed his reinstatement with continuity of service and 50% back wages. The controversy, therefore, lies not in the validity of the earlier Award, but in determining the legal consequences flowing therefrom. Therefore, it is necessary to examine the true import of the earlier Award dated 01st March, 1999, passed in I.D. No.141/85.

15. In view of the aforesaid, it becomes quintessential for this Court to determine whether the learned Industrial Tribunal misdirected itself in law in directing the regularisation of the Respondent with effect from 02nd March, 1982, by way of the impugned Award.

16. The Respondent has contended that once reinstatement with continuity of service was directed and the Award attained finality, he was required to be treated as having remained in uninterrupted service for all purposes. According to him, denying regularisation from the date on which he would otherwise have become eligible renders the relief of continuity of service illusory and places him below employees admittedly junior to him. It is further submitted that continuity of service necessarily carries with it all consequential service benefits, including regularisation, seniority, pay fixation, promotional avenues and retirement benefits.

17. The Petitioner, on the other hand, contends that the learned Tribunal fundamentally misconstrued the legal effect of reinstatement and continuity of service. According to the Petitioner, reinstatement merely restored the Respondent to the position which he occupied immediately prior to his termination, namely that of a daily-rated Retainer Crew Driver. It is submitted that neither the earlier Award nor the order of reinstatement dated



18th March, 2002 conferred permanent status or directed regularisation. The Petitioner further contends that continuity of service cannot be equated with regularisation and that the Respondent's entitlement to regularisation had to be independently examined under the applicable service conditions governing Retainer Crew Drivers.

18. At the outset, the rival submissions necessitate an examination of three distinct concepts in service jurisprudence, namely reinstatement, continuity of service and regularisation. Though these expressions frequently appear together in industrial adjudication, they are not interchangeable, and each operates within a distinct legal framework.

19. To begin with, '**Reinstatement**' is a relief granted by a judicial or quasi-judicial forum where the termination of an employee is found to be illegal or otherwise unsustainable in law. The object of such relief is to restore the employer-employee relationship which stood wrongfully severed and to place the employee, as far as practicable, in the same position in which he would have been had the illegal termination not taken place.

20. Support may be taken from the judgment of "**Deepali Gundu Surwase (supra)**" in this regard. The relevant paragraph of the judgment has been extracted hereunder-

"16. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol.II, 3rd Edition, the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstatement" means to reinstall; to re establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and



the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word “reinstate” means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black’s Law Dictionary, 6th Edition, “reinstatement” means ‘to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed’

21. Reinstatement, however, does not amount to a fresh appointment, nor does it elevate the status of an employee beyond what existed immediately prior to termination. It merely revives the employment relationship in the same capacity in which the employee was serving when his services came to be terminated.

22. Equally distinct is the concept of ‘**Continuity of Service**’. The expression is intended to efface the artificial break in service caused by an illegal order of termination with no fault on the workman’s end and to ensure that such interruption does not prejudice the workman in matters where uninterrupted service carries legal significance.

23. The grant of continuity of service creates a legal fiction whereby the intervening period between the termination and reinstatement is treated as part of the employee's continuous service. Such continuity is ordinarily relevant for purposes such as computation of qualifying service, pensionary benefits, gratuity, seniority, where permissible under the applicable statutory provisions or service rules, and other service benefits dependent upon the length of service.

24. Therefore, continuity of service cannot be construed in isolation. Its scope and effect must be understood in the context in which it is granted and



the applicable statutory framework or service rules. By itself, continuity of service does not constitute an independent source of substantive rights, nor does it automatically confer benefits that are not expressly granted or otherwise available in law.

25. In ***Deepali Gundu Surwase (supra)***, the Hon'ble Supreme Court, after considering a catena of earlier decisions, including ***Hindustan Tin Works (P) Ltd. v. Employees*** (1979) 2 SCC 80; ***Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi*** (1980) 4 SCC 443; ***U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey*** (2006) 1 SCC 479; ***J.K. Synthetics Ltd. v. K.P. Agrawal & Anr*** (2007) 2 SCC 433, and several other precedents, examined the legal consequences of reinstatement following wrongful termination. The Court held that reinstatement, if not accompanied by continuity of service and, where warranted, back wages, may not fully redress the prejudice caused by the illegal termination. At the same time, the Hon'ble Court recognised that while continuity of service ordinarily entitles an employee to benefits flowing from uninterrupted service, the actual consequences depend upon the nature of employment, the governing rules and the relief granted by the adjudicating authority. Nonetheless, the judgment cannot be read as laying down an absolute proposition that continuity of service invariably confers every conceivable service benefit irrespective of the statutory framework governing the employment. The relevant paragraph of the said judgment is reproduced hereunder:

“33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.



ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

[.....]

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman”

(emphasis supplied)

26. The legal position, therefore, stands settled that an order directing reinstatement coupled with continuity of service, though carrying important legal consequences, does not *ipso facto* entitle a workman to every



consequential service benefit. While reinstatement restores the employer-employee relationship by placing the workman in the position held immediately before the illegal termination, continuity of service merely obliterates the artificial break in service to ensure that the employee is not deprived of benefits dependent upon uninterrupted service. However, in the absence of an express direction or an independent entitlement flowing from the applicable statutory provisions, service rules or governing policy, neither reinstatement nor continuity of service can be interpreted as conferring a right to regularisation, notional increments, or any other substantive service benefits that were not otherwise available. The extent and nature of the benefits flowing from such relief must, therefore, be determined having regard to the terms of the award, the nature of the employment, and the legal framework governing the service conditions.

27. The aforesaid principle has consistently been recognised by the Hon'ble Supreme Court time and again. In **Allahabad Bank v. Prem Singh (Supra)**, the Supreme Court held that reinstatement following illegal termination merely restores the employee to his original position and cannot automatically confer permanent status or regular appointment. Similarly, in **Regional Manager, State Bank of India v. Mahatma Mishra (Supra)**, it was reiterated that continuance in service or reinstatement does not, by itself, create a legal right to regularisation unless such right otherwise flows from the applicable statutory rules or service conditions.

28. In furtherance, the Hon'ble Apex Court in the judgment of **"A.P.S.R.T.C. & Anr. vs. S. Narsagoud"** (2003) 2 SCC 212, held that a distinction must be drawn between a direction of reinstatement with continuity of service and a direction granting all consequential service



benefits. Continuity of service, by itself, merely preserves the employee's service for limited purposes and does not automatically entitle the employee to increments or other consequential benefits for the intervening period, unless the Court specifically directs the grant of such benefits. Furthermore, in the judgment of ***"A.P.S.R.T.C. & Anr. vs. Abdul Kareem"***, 2007 (2) SCC 466, the Hon'ble Supreme Court reaffirmed the principle laid down in ***"A.P. S.R.T.C. v. S. Narsagoud (Supra)"***, holding that an order of reinstatement with continuity of service cannot, in the absence of a specific direction, be construed as conferring all consequential service benefits.

29. This distinction between reinstatement and the consequential benefits flowing therefrom assumes significance in the present case. The earlier Award merely directed the reinstatement of the Respondent with continuity of service and 50% back wages. It neither directed the regularisation of the Respondent's services nor declared that he was to be treated as a regular Driver from the date of his initial engagement. However, while passing the impugned Award, the learned Tribunal proceeded to treat the earlier Award as the foundation for granting regularisation to the Respondent. The Award was confined to directing reinstatement with continuity of service and partial back wages and cannot be construed as conferring upon the Respondent the status of a regular employee or directing his retrospective regularisation.

30. Regularisation occupies an altogether different field in service jurisprudence. Unlike reinstatement or continuity of service, regularisation concerns the conferment of substantive status in public employment by bringing an employee into the regular cadre against a sanctioned post in accordance with the governing recruitment rules and the constitutional mandate embodied in Articles 14 and 16 of the Constitution.



31. The doctrine of regularisation emerged in response to the increasing reliance of public authorities on daily-wage, *ad hoc*, contractual and other temporary appointments to meet growing administrative needs. Over time, these temporary engagements evolved into a parallel informal workforce performing perennial functions without security of tenure, equal wages, or service benefits, despite the employer's continued dependence on their services.

32. Early judicial intervention, guided by considerations of fairness and social justice, treated regularisation as an equitable remedy to alleviate the hardship faced by long-serving temporary employees. However, the indiscriminate grant of regularisation subsequently raised serious constitutional concerns, as it bypassed the prescribed recruitment process, undermined the principles of equal opportunity and merit-based public employment, and diluted reservation policies. The Courts were, therefore, called upon to balance the competing claims of long-serving temporary employees with the constitutional rights of eligible candidates seeking public employment.

33. It was in this backdrop that the Hon'ble Supreme Court, in its Constitution Bench judgment in ***Secretary, State of Karnataka v. Uma Devi***, (2006) 4 SCC 1, held that regularisation cannot be treated as an alternative mode of recruitment. The Court observed that public employment must conform to the constitutional mandate of equal opportunity and that appointments made *de hors* the prescribed recruitment procedure cannot ordinarily be regularised merely because the employee has continued in service for a considerable period. The Constitution Bench further cautioned that Courts, while exercising the power of judicial review, cannot direct



regularisation solely on equitable considerations, as such directions would defeat the constitutional guarantee of equality in matters of public employment.

34. Furthermore, in ***Uma Devi (supra)***, the Hon'ble Supreme Court, while reaffirming the constitutional limitations on regularisation, poignantly acknowledged the emotional and economic hardship endured by long-serving temporary employees. Adopting a calibrated and balanced approach, the Constitution Bench carved out a one-time measure permitting the regularisation of employees who had rendered more than ten years of continuous service against sanctioned posts, provided their appointments were irregular and not illegal. The decision thus reflects a jurisprudence that is both constitutionally principled and humane.

35. The same principle came to be reaffirmed by the Hon'ble Supreme Court in the judgment of ***“State of Rajasthan & Ors. v. Dayalal & Ors.”*** (2011) 2 SCC 429, wherein it was held that neither long service nor an order of reinstatement with continuity of service creates an automatic right to regularisation,

“8. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

[...]

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be ‘litigious employment’. Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for



passing any order of regularization in the absence of a legal right. [....]”

(emphasis supplied)

36. Viewed from the aforesaid legal perspective, the earlier Award dated 01st March, 1999 requires careful examination. A plain reading thereof leaves no manner of doubt that the learned Tribunal intended only to restore the Respondent to the position which he occupied immediately prior to his illegal termination. Accordingly, the Award directed reinstatement with continuity of service and 50% back wages. Significantly, no direction was issued declaring the Respondent to be a regular Driver, nor was any declaration made that he would stand regularised from the date of his initial engagement.

37. Consequently, the legal effect of the earlier Award was confined to restoring the Respondent to his original status as a daily-rated Retainer Crew Driver, while extending to him the benefit of continuity of service for the purposes recognised by law. Whether such continuity subsequently entitled him to claim regularisation was an independent issue, to be determined with reference to the applicable service regulations, the governing policy, the treatment accorded to similarly situated employees, and the factual circumstances prevailing during the relevant period. Such an entitlement could not be inferred merely from the grant of continuity of service.

38. This Court finds considerable merit in the submissions advanced on behalf of the Petitioner in the aforesaid regard and accordingly accepts the same.

39. This Court is, therefore, of the considered opinion that the learned Tribunal erred in proceeding on the premise that the earlier



Award, by itself, created a vested right in favour of the Respondent to claim retrospective regularisation with effect from 02nd March, 1982.

The earlier industrial dispute was confined to the legality of the Respondent's termination and the consequential relief of reinstatement with continuity of service and partial back wages. The question of regularisation neither arose for consideration nor was it adjudicated therein.

40. The claim for regularisation constituted a distinct and independent cause of action, which required adjudication on its own merits in the subsequent reference. The learned Tribunal was, therefore, under an obligation to examine such claim independently, on the basis of the pleadings, the evidence led by the parties, the applicable service regulations and policy governing Retainer Crew Drivers, and the treatment accorded to similarly situated employees. Instead, the learned Tribunal proceeded on the erroneous premise that the earlier Award itself conferred a right to regularisation. Such an approach, in the considered opinion of this Court, amounts to attributing to the earlier Award a consequence which it neither expressly provided for nor could be said to have impliedly intended. The relief of continuity of service, though undoubtedly significant, cannot, in the absence of an express direction or an independent legal entitlement, be elevated to a declaration of permanent status or retrospective regularisation.

41. Nevertheless, this conclusion does not, by itself, conclude the controversy. The Respondent has specifically contended that, under the service conditions governing Retainer Crew Drivers, several employees junior to him were absorbed into the monthly-rated establishment during the period when he remained out of service owing to the illegal termination and that, had such termination not intervened, he too would have been accorded



similar treatment. Such a plea cannot be rejected merely because continuity of service, by itself, does not confer a right to regularisation. If established on facts, the allegation of discriminatory treatment *vis-à-vis* juniors would undoubtedly require independent adjudication on the touchstone of the applicable service conditions and the constitutional principles of equality and non-arbitrariness.

42. Viewed thus, the determinative issue before the learned Tribunal, along with whether continuity of service automatically resulted in regularisation, was whether, on an application of the governing service conditions to the evidence adduced before it, the Respondent had established his entitlement to be considered for regularisation along with his juniors. Unfortunately, the learned Tribunal did not undertake such an exercise. Instead, the impugned Award proceeds on assumptions unsupported either by the governing service framework or by a proper appreciation of the evidence led by the parties.

43. At the outset, this Court finds that the impugned Award proceeds on an erroneous understanding of the concepts of absorption and regularisation, treating the two expressions as interchangeable. In service jurisprudence, however, the two occupy distinct legal fields.

44. Absorption ordinarily denotes the process by which an employee serving in one capacity is brought into another establishment or cadre in accordance with the applicable service conditions. Regularisation, on the other hand, concerns the conferment of regular status in service in accordance with the governing statutory provisions, recruitment rules or applicable policy. Though the two processes may, in a given factual situation, overlap, they cannot be treated as synonymous in law.



45. The distinction assumes considerable significance in the facts of the present case. Clause (6) governing Retainer Crew Drivers contemplated absorption into the monthly-rated temporary establishment subject to fulfilment of specified conditions, namely seniority, merit, conduct, performance and availability of vacancies. The learned Tribunal, however, proceeded as though such absorption automatically resulted in regularisation from the date of initial engagement, without examining whether the governing policy itself contemplated any such consequence.

46. Significantly, the impugned Award contains no discussion whatsoever regarding the legal distinction between absorption and regularisation or the manner in which the applicable service conditions were required to operate. In the considered opinion of this Court, the failure to appreciate this fundamental distinction has materially affected the reasoning adopted by the learned Tribunal and constitutes a manifest error apparent on the face of the Award.

47. Equally significant is the state of the evidence before the learned Tribunal.

48. The Petitioner sought to dispute the Respondent's claim primarily by relying upon the affidavit of Shri K.D. Sobti. The said affidavit merely reiterated the policy governing the absorption of Retainer Crew Drivers in the DTC and contained vague assertions regarding the Respondent's leave record and his debarment from work. Significantly, however, the affidavit failed to satisfactorily answer the specific queries raised by the learned Tribunal concerning the Respondent's service conditions and the basis of his claim for regularisation.



49. Apart from the said affidavit, the Petitioner did not produce any policy documents, seniority records, administrative circulars or other contemporaneous material explaining the manner in which Retainer Crew Drivers were considered for regularisation. More importantly, no material was placed before the learned Tribunal to demonstrate whether the employer itself treated absorption and regularisation as distinct concepts or whether absorption into the monthly-rated establishment automatically culminated in regularisation. Thus, the Petitioner's defence remained unsupported by the relevant service records which alone could have clarified the applicable policy.

50. The Respondent, on the other hand, asserted that employees junior to him had been absorbed or regularised during the period when he remained out of service on account of the illegal termination and that he had thereby been denied equal treatment. However, this assertion was equally unsupported by documentary evidence. No seniority list, appointment orders, regularisation orders, comparative service particulars or any other contemporaneous record was produced to substantiate the plea that similarly situated employees junior to him had, in fact, been extended such benefits.

51. The plea of parity constituted the very foundation of the Respondent's claim. Once the same was specifically disputed by the employer, it became incumbent upon the Respondent to place before the learned Tribunal some material demonstrating that such differential treatment had in fact occurred. Equally, the Petitioner was required to substantiate its defence by producing the governing service records and policy documents. Neither party discharged the evidentiary burden cast upon it.



52. Notwithstanding these deficiencies, the learned Tribunal proceeded to grant the Respondent the benefit of retrospective regularisation. The impugned Award neither identifies the evidence upon which such conclusion is founded nor records any finding that the conditions governing absorption or regularisation stood satisfied. Instead, the learned Tribunal appears to have proceeded primarily on the basis of the earlier Award granting continuity of service and the affidavit of Shri K.D. Sobti, without explaining how either established the Respondent's entitlement to retrospective regularisation.

53. More importantly, the learned Tribunal failed to examine the service framework governing Retainer Crew Drivers altogether. There is no discussion regarding the availability of vacancies, comparative seniority, merit, conduct or performance of the Respondent, despite these being relevant considerations under Clause (6) governing absorption into the monthly-rated establishment. Equally absent is any consideration of the Petitioner's defence that absorption was subject to fulfilment of objective conditions and did not follow automatically upon completion of any particular period of service.

54. This omission assumes greater significance because the reference before the learned Tribunal did not concern the legality of the Respondent's termination. That issue had already attained finality by virtue of the earlier Award dated 01st March, 1999. The limited question requiring adjudication in the subsequent reference was whether, notwithstanding his reinstatement, the Respondent had established an independent entitlement to regularisation from 02nd March, 1982. Such an issue necessarily required a detailed examination of the governing service conditions, the relevant policy, the



comparative treatment accorded to similarly situated employees and the evidence led by both parties. The impugned Award, however, is conspicuously silent on all these material aspects.

55. The learned Tribunal was under a duty to evaluate the pleadings, appreciate the evidence adduced by the parties and record findings supported by cogent reasons. Instead, the impugned Award merely records conclusions without disclosing the analytical process by which those conclusions were reached. Material contentions raised by both sides remain unanswered, and the Award does not indicate the evidentiary basis upon which the Respondent's claim came to be accepted.

56. It is well settled that recording of reasons is an indispensable facet of every judicial and quasi-judicial determination. Reasons constitute the heartbeat of a judicial decision. They demonstrate due application of mind, enable the parties to understand the basis of the conclusion reached and facilitate effective judicial review by the superior Courts. Equally well settled is the principle that an order unsupported by reasons, or one rendered without proper appreciation of the material evidence on record, cannot be sustained merely because the ultimate conclusion may otherwise appear plausible.

57. Tested on these settled principles, the impugned Award cannot be sustained. The learned Tribunal has failed to appreciate the legal distinction between absorption and regularisation; it has proceeded in the absence of the relevant documentary material governing the service conditions of Retainer Crew Drivers; it has accepted the Respondent's plea of parity without any supporting evidence; and, ultimately, it has returned findings unsupported by



adequate reasons. The cumulative effect of these deficiencies renders the adjudication legally unsustainable.

58. For all the aforesaid reasons, this Court is of the considered opinion that the impugned Award dated 02nd February, 2005 cannot be sustained. The learned Tribunal has failed to independently adjudicate the Respondent's claim for regularisation in accordance with the applicable service conditions and the evidence brought on record. Instead, it has proceeded on the erroneous premise that the earlier Award granting reinstatement with continuity of service, by itself, conferred a right to retrospective regularisation. Such an approach is contrary to the settled principles governing reinstatement, continuity of service and regularisation, and has resulted in a legally unsustainable adjudication.

59. Accordingly, **the impugned Award dated 02nd February, 2005, passed by the learned Industrial Tribunal, cannot be sustained in law and is hereby set aside.** The matter is remanded to the learned Industrial Tribunal for fresh adjudication in accordance with law, keeping in view the observations made hereinabove.

60. The reference shall, therefore, stand restored to the file of the learned Industrial Tribunal, which shall adjudicate the Respondent's claim for regularisation independently and on its own merits, in accordance with the applicable service conditions, the governing policy, the evidence already available on record and such further evidence, if any, as the learned Tribunal may consider necessary to permit in the interests of justice.

61. It is clarified that this Court has not expressed any opinion on the merits of the Respondent's claim for regularisation. The observations contained in the present judgment are confined to the legal infirmities found



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in the impugned Award and shall not be construed as an expression on the ultimate entitlement of either party. All rights and contentions of the parties on the issue of regularisation are expressly kept open to be urged before the learned Industrial Tribunal.

62. Considering that the industrial dispute has remained pending for a considerable period of time, the learned Industrial Tribunal is requested to make an endeavour to dispose of the reference as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this judgment.

63. The present Writ Petition is, accordingly, disposed of in the aforesaid terms. Pending applications, if any, also stand disposed of. There shall be no order as to costs.

SHAIL JAIN
JUDGE

JULY 28, 2026/MM