



2026:DHC:8515-DB



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

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Judgment Reserved on: 11.08.2026

Judgment Delivered on: 30.09.2026

CNR No. DLHC010334572023

+ **LPA 605/2023**

RAMJI LAL

.....Appellant

versus

M/S BSES YAMUNA POWER LTD

.....Respondent

Advocates who appeared in this case

For the Appellant : Mr. Jawahar Raja, Mr. Ishaan Goel,
Ms. L. Gangmei, Ms. Meghna De and
Mr. Siddharth Sapra, Advocates.

For the Respondent : Mr. Sandeep Prabhakar, Senior
Advocate with Mr. Vikas Mehta,
Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Letters Patent Appeal has been preferred assailing the judgment dated 12.09.2022 (“**Impugned Judgment**”) passed in W.P.(C) 5746/2003 (“**Writ Petition**”), filed by the Respondent, whereby the Writ Petition was allowed and award dated 06.05.2002 (“**Award**”) passed by learned Presiding Officer, Industrial Tribunal-III, Karkardooma, Delhi (“**Industrial Tribunal**”) in I.D. No. 107/1995 was set aside.



FACTUAL MATRIX

2. The Appellant joined the employment of *M/s Delhi Electric Supply Undertaking* (“**DESU**”) on the post of Mason, Grade I on daily wage basis with effect from 24.03.1975. The services of the Appellant were terminated by DESU *vide* order dated 31.03.1976 (“**Termination Order**”).
3. Aggrieved by the Termination Order, the Appellant raised an industrial dispute being L.C.I.D. No. 66/1983. The said dispute was decided *vide* award dated 31.08.1985, whereby the Appellant’s termination was held to be illegal, and he was granted reinstatement with continuity of service and full back wages with effect from 20.05.1982. In compliance of the said award, the Appellant was reinstated in service with effect from 29.04.1986, and the award attained finality, not having been assailed by DESU.
4. The services of the Appellant were thereafter regularized with effect from 12.06.1986 on the post of *Mazdoor*, in the pay scale of ₹410 to ₹580/-, and not on the post of Mason, Grade I, on which post he had rendered service.
5. The Appellant raised an industrial dispute in respect of the said regularization by resorting to conciliation proceedings, which proceedings failed. The dispute was consequently referred for adjudication, registered as I.D. No. 107/1995.
6. Learned Industrial Tribunal passed the Award holding that the Appellant was entitled to regularization on the post of Mason, Grade I with effect from 25.03.1977, and directed DESU to place him in the corresponding pay scale and allowances with effect from that date, together with the arrears of the difference in pay.



7. In the year 2002, consequent upon the privatization of the *Delhi Vidyut Board*, the work of distribution of electricity, together with the entire undertaking of the erstwhile *Delhi Vidyut Board*, came to be distributed amongst three companies, namely, *BSES Rajdhani Power Limited*, *BSES Yamuna Power Limited*, and *North Delhi Power Limited*.

8. A demand notice dated 31.05.2003 was served upon the Respondent, calling upon it to implement the Award; no reply, however, was furnished by the Respondent. Consequently, in June 2003, the Appellant initiated recovery proceedings by filing an application under Section 33C(1) of the Industrial Disputes Act, 1947 (“**Act**”), claiming arrears for the period from 25.03.1977 to 31.03.2003, amounting to ₹3,74,424/-.

9. In September 2003, the Respondent filed a Writ Petition challenging the Award along with C.M. No. 10123/2003, seeking an *ex parte* interim stay on the operation of the Award. *Vide* order dated 08.09.2003, learned Single Judge granted interim stay on the operation of the Award. Subsequently, *vide* order dated 24.08.2006, the Writ Petition came to be dismissed in default. The Respondent thereupon filed C.M. No. 14694/2006 seeking restoration of the Writ Petition, along with C.M. No. 14695/2006 seeking condonation of delay in filing the said restoration application. Both applications were allowed on 21.11.2006, and the Writ Petition was restored to its original number.

10. Thereafter, learned Single Judge set aside the Award *vide* the Impugned Judgment. Aggrieved thereby, the Appellant has preferred the present Appeal.



SUBMISSIONS ON BEHALF OF THE APPELLANT

11. Mr. Jawahar Raja, learned Counsel for the Appellant submitted that the finding of learned Single Judge that the Appellant had been appointed for a specific period to a specific job was perverse, since an employer must make a workman aware of such terms at the outset, and the finding ran contrary to the decision in ***S.M. Nilajkar v. Telecom District Manager, Karnataka***, (2003) 4 SCC 27, wherein it was held that a project-based termination falls outside “*retrenchment*” under Section 2(oo)(bb) of the Act only where the workman was engaged on a temporary scheme, his contract itself provided for cessation on its expiry, the termination coincided with that expiry, and he had been so informed at the commencement of employment; none of which was shown in the present case.

12. Learned Counsel for the Appellant submitted that the Impugned Judgment did not consider the Respondent’s own admission, in its Written Statement filed in the Writ Petition, that the Appellant was appointed as Mason with effect from 24.03.1975 and that its finding that the post of Mason, Grade I stood “*saturated*” was unsupported by any evidence.

13. Learned Counsel for the Appellant further submitted that the Industrial and Labour Courts possess wide jurisdiction to mould appropriate relief in an industrial dispute and are competent even to vary the contract of service between an employer and a workman. Reliance was placed upon the following decisions while making the said submission:

- a. ***Western India Automobile Association v. Industrial Tribunal, Bombay***, 1949 SCC OnLine FC 12;
- b. ***The Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd.***, AIR 1950 SC 188;



- c. *Bidi, Bidi Leaves v. State of Bombay*, AIR 1962 SC 486; and
- d. *Co-operative Bank v. Industrial Tribunal*, 1970(1) SCR 205.

14. It was submitted by learned Counsel for the Appellant that the object of industrial law was to secure decent conditions for labour and, through that, industrial peace and productivity. Reliance was placed upon the decisions in *Bengal Chemical & Pharmaceutical Works v. Their Workmen*, 1959 Supp 2 SCR 136; and *Hindustan Antibiotics Ltd. v. The Workmen*, (1967) 1 SCR 652 while making the said submission.

15. It was submitted on behalf of the Appellant that the expression “*sanctioned post*” is not provided in the Constitution of India, 1950 (“**Constitution**”), and that the only constitutional reference to “*posts*” bearing on the present controversy occurred in Part XIV and Articles 16 and 335 of the Constitution, which governed Union and State services and had no application to statutory corporations. Further, employees of statutory corporations were not “*servants of the Union or State*” for the purposes of Part XIV, even where such corporations qualified as “*State*” under Article 12 of the Constitution. Reliance was placed upon the following decisions in support of this submission:

- a. *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, (1975) 3 SCR 619;
- b. *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCR 722;
- c. *Som Prakash Rekhi v. Union of India*, (1981) 2 SCR 111;
- d. *S.L. Agarwal v. Hindustan Steel*, (1970) 3 SCR 363; and
- e. *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 3 SCR 100.



16. Further, it was submitted by the learned Counsel for the Appellant that the service conditions of the employees in public sector undertakings are not analogous to those of the Government employees. The public sector employees lacked the tenure, pension and constitutional protection available to civil servants, and that their service conditions more closely resembled those of private sector employees. Reliance was placed upon the decisions in *Hindustan Antibiotics Ltd.* (*supra*); and *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, 1990 Supp (1) SCR 142 while making the said submission.

17. Learned Counsel for the Appellant submitted that the Appellant was kept on daily wages from 24.03.1975 to 12.06.1986 despite the permanent nature of his work, contrary to Item 10 of the Fifth Schedule to the Act, which leads to the inference that he was denied permanency, without requiring proof of the Respondent's intent. Reliance was placed upon the decision in *Chief Conservator of Forests v. Jagannath Maruti Kondhare*, (1996) 2 SCC 293 while making the said submissions.

18. It was submitted on behalf of the Appellant that the decision in *State of Karnataka v. Umadevi (3) and Others* (2006) 4 SCC 1, dealt only with writ jurisdiction under Articles 226, 32 and 142 of the Constitution, never considered either the jurisdiction of Industrial Tribunals or the earlier Constitution Bench decision in *Steel Authority of India Ltd. v. National Union Waterfront Workers*, (2001) Supp 2 SCR 343, which held that Industrial Adjudicators alone are competent to pierce sham arrangements and direct regularisation. It was further submitted that the Courts have, even after *Umadevi* (*supra*), continued to uphold regularisation absent sanctioned posts while relying upon the decisions in *Pandurang Sitaram Jadhav v.*



State of Maharashtra, (2020) 17 SCC 393; and *Nihal Singh v. State of Punjab*, (2013) 14 SCC 65; and that to read the decision of *Umadevi* (*supra*) as a blanket bar would let employers invoke it to indefinitely avoid regularising workmen; the very mischief it sought to prevent. Reliance was placed upon the decision in *Narendra Kumar Tiwari v. State of Jharkhand*, (2018) 8 SCC 238 while making the said submission.

19. Accordingly, learned Counsel for the Appellant submitted that the Impugned Judgment is liable to be set aside, and the present Appeal be allowed.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

20. Mr. Sandeep Prabhakar, learned Senior Counsel for the Respondent submitted that the Appellant's claim for regularization to the post of Mason, Grade I is untenable, as the said post was a direct recruitment post under the applicable Recruitment and Promotion Regulations ("**Regulations**"), and the Appellant did not possess the requisite eligibility criteria prescribed therefor. The Appellant was regularized as *Mazdoor* in accordance with the policy of the Respondent and the terms of the settlement with the recognised union, and he accepted the said regularization without any reservation or objection, discharging his duties on the post of *Mazdoor* for a considerable period before raising the present claim. Learned Industrial Tribunal's Award directing regularization as Mason, Grade I did not consider the statutory recruitment framework, the nature of the post, and the eligibility conditions, and was thus, rightly set aside by learned Single Judge.

21. Learned Senior Counsel for the Respondent further submitted that regularization cannot be a mode of appointment, and any direction for regularization must conform to the existence of sanctioned posts, availability



of vacancies, due process of open competition, and fulfilment of eligibility under the recruitment rules. In the present case, the Appellant's claim fails on each of these essential parameters, and granting the relief sought would amount to permitting a backdoor entry into service, which is impermissible in law. It was submitted by the Respondent that the Appellant, having availed the benefits of regularization as *Mazdoor* without demur for a significant period, is estopped from now seeking regularization to a different post on terms he did not assert at the relevant time.

22. It was submitted on behalf of the Respondent that the Appellant's reliance on *S.M. Nilajkar (supra)* is misplaced, as it concerns project-based termination under Section 2(oo)(bb) of the Act, not regularization contrary to eligibility. The decisions cited to support moulding of relief, namely, *Western India Automobile Association (supra)*; *Bharat Bank Ltd. (supra)*; *Bidi, Bidi Leaves (supra)*; and *Co-operative Bank (supra)*, do not permit appointment / regularization contrary to recruitment rules or in absence of eligibility.

23. It was further submitted on behalf of the Respondent that the decisions in *Hindustan Antibiotics (supra)*; and *D.T.C. Mazdoor Congress (supra)* do not mandate regularization without eligibility. The decision in *Jagannath Maruti Kondhare (supra)* is inapplicable, as the Appellant was never entitled to Mason. *Umadevi (supra)* and its civil-service precedents concern writ jurisdiction and do not compel regularization where eligibility is absent. Similarly, *National Union Waterfront Workers (supra)* does not assist, as it does not permit regularization without fulfilling eligibility.

24. Learned Senior Counsel for the Respondent submitted that the decisions in *Pandurang Jadhav (supra)* and *Nihal Singh (supra)* are fact-



specific and do not lay down that eligibility can be dispensed with. The decision in *Narendra Kumar Tiwari* (*supra*) does not support regularization where the workman does not fulfil eligibility or where the post is direct recruitment. The said decision recognized a limited one-time exception to *Umadevi* (*supra*) only for employees who: (i) have completed 10 years of service in duly sanctioned posts without Court protection; and (ii) whose appointments are not illegal, though possibly irregular. It does not permit regularization where the employee lacks the prescribed minimum qualifications or where the appointment itself would be illegal.

25. Accordingly, learned Senior Counsel for the Respondent submitted that the Impugned Judgment is liable to be upheld and the present Appeal be dismissed.

ANALYSIS AND FINDINGS

26. We have learned Counsel for the Appellant and learned Senior Counsel for the Respondent as well as the material placed on record.

27. The principal issue arising for our consideration is whether learned Industrial Tribunal was justified in directing the regularization of the Appellant to the post of Mason, Grade I, notwithstanding that the said post was required to be filled by direct recruitment under the Regulations and that the Appellant did not possess the qualifications prescribed thereunder, namely: (i) a certificate in Masonry from an Industrial Training Institute, or an equivalent qualification; and (ii) one year's experience in the trade with a reputed firm or public undertaking. It is undisputed that the Appellant possessed neither of the prescribed qualifications and had never applied for any advertised vacancy to the post of Mason in accordance with the stipulated procedure.



28. The learned Single Judge has held that that regularization does not constitute a mode of appointment and that any direction granting regularization must satisfy four essential requirements: (i) the existence of a sanctioned post; (ii) the availability of a vacancy therein; (iii) adherence to the prescribed process of open competition; and (iv) fulfilment of the eligibility criteria stipulated under the applicable recruitment rules. In our considered view, the Appellant's claim fails to satisfy each of these requirements.

29. It is undisputed that no sanctioned post designated as 'Mason, Grade I' existed in DESU; the sole sanctioned post was that of Mason, appointment to which was required to be made exclusively through direct recruitment. The circumstance that the Appellant was described as, and permitted to discharge the duties of, Mason, Grade I during his engagement on a daily-wage basis does not further his case. An engagement made *dehors* the sanctioned recruitment process cannot, merely by reason of its duration, crystallize into an enforceable right to substantive appointment in the regular cadre of the post concerned.

30. In this context, the admission contained in the Respondent's Written Statement regarding the Appellant's initial date of engagement, namely, 24.03.1975, does not further the Appellant's case. The admission establishes only the factum of engagement; it neither establishes the mode thereof nor demonstrates that the Appellant was inducted through the process of direct recruitment applicable to the post. Whether the finding concerning the "saturation" of the post was independently substantiated by the record is immaterial, since the Appellant's claim, in any event, fails on the independent and sufficient grounds that he neither possessed the prescribed



eligibility nor was considered against any vacancy in the manner contemplated by the Regulations.

31. The Appellant has also placed no material on record to establish that a vacancy in the post of Mason existed at the relevant time, or that he was considered, or was entitled to be considered, against such vacancy through the prescribed process of open competition. To permit regularization in these circumstances would amount to sanctioning a back-door entry into public service, which is impermissible in law.

32. Accordingly, we concur with the view taken by the learned Single Judge in the Impugned Judgement. We are further of the considered view that the Appellant's conduct militates against the grant of the retrospective relief sought. The Appellant accepted regularization to the post of *Mazdoor* on 12.06.1986 and continued to avail the attendant benefits for nearly a decade before asserting the present claim. This delay is relevant and reinforces the conclusion that the Appellant is not entitled to placement, with effect from 1977, on a post to which he was never validly appointed.

33. Learned Counsel for the Appellant relied upon *S.M. Nilajkar (supra)* to contend that the finding returned by the learned Single Judge regarding the temporary nature of the Appellant's engagement was perverse. We find no merit in the said contention. *S.M. Nilajkar (supra)* concerned the question whether termination consequent upon the completion of a project falls outside the ambit of "retrenchment" under Section 2(oo)(bb) of the Act. The said decision has no bearing upon the issue presently arising for consideration, namely, eligibility for regularization to a post required to be filled through direct recruitment.



34. Likewise, the decisions in *Western India Automobile Association (supra)*, *Bharat Bank Ltd. (supra)*, *Bidi, Bidi Leaves (supra)*, and *Co-operative Bank (supra)*, relied upon by the Appellant in support of the proposition that Industrial Courts possess wide jurisdiction to mould relief and vary the terms of a contract of service, do not establish that such jurisdiction extends to directing appointment or regularization in derogation of statutory recruitment rules, or in the absence of a sanctioned post and the prescribed eligibility.

35. The submission of the Appellant that the requirement of a sanctioned post is a constitutional construct confined to Part XIV and Articles 16 and 335 of the Constitution, and is, therefore, inapplicable to a statutory corporation such as DESU, is misconceived. In the present case, the requirement does not emanate from Part XIV of the Constitution. Rather, it arises from the Respondent's own Regulations and from the broader principle, of general application and independent of the constitutional character of the employer, that appointment to public employment must be made only through the procedure prescribed therefor.

36. It is immaterial whether the Appellant's service conditions are tested against the constitutional provisions applicable to civil servants, as considered in *Sukhdev Singh (supra)*, *Ajay Hasia (supra)*, *Som Prakash Rekhi (supra)*, *S.L. Agarwal (supra)*, and *Pradeep Kumar Biswas (supra)*, or against the principles of service jurisprudence ordinarily applicable to employees of statutory corporations, since the deficiency in the Appellant's case remains the same under either framework.

37. For the same reason, the decisions in *Hindustan Antibiotics Ltd. (supra)* and *D.T.C. Mazdoor Congress (supra)*, which recognize that the



service conditions of public-sector employees are not, in all respects, analogous to those of Government servants, do not assist the Appellant. Neither decision dispenses with the requirements of eligibility or the existence of a sanctioned post.

38. The decision in *Chief Conservator of Forests (supra)* does not advance the Appellant's case, as it proceeds on the premise that the workman was otherwise entitled to the post in question. *Umadevi (supra)* and the line of decision relied upon by the Appellant concern the scope of writ jurisdiction under Articles 226, 32, and 142 of the Constitution; they cannot be construed as permitting regularization where the workman does not satisfy the prescribed eligibility for the post.

39. The decision in *National Union Waterfront Workers (supra)* is likewise of no assistance to the Appellant. Although it recognizes the power of Industrial Adjudicators to examine disguised arrangements and to direct regularization where the facts so warrant, it does not authorize regularization where the workman fails to satisfy the eligibility criteria prescribed for the post.

40. The decisions in *Pandurang Sitaram Jadhav (supra)* and *Nihal Singh (supra)*, being decisions rendered in the peculiar facts and circumstances of those cases, neither enunciate any general proposition that the prescribed eligibility requirements may be dispensed with; nor can they, in our considered view, be construed as laying down such a proposition. Properly construed, the decision in *Narendra Kumar Tiwari (supra)* recognizes only a limited exception to the rule enunciated in *Umadevi (supra)*, confined to workmen who had completed ten years of continuous service against sanctioned posts without the protection of any interim order



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of a Court and whose initial appointments, though irregular, were not illegal. The said exception has no application to the Appellant, whose claim to the post of Mason, Grade I fails not merely for want of a sanctioned post, but also on the more fundamental ground that he did not, at any stage, possess the eligibility prescribed for appointment thereto.

41. For the foregoing reasons, we find no infirmity in the Impugned Judgment dated 12.09.2022 warranting interference. The present Appeal is, accordingly, dismissed. There shall be no order as to costs.

TEJAS KARIA, J

DEVENDRA KUMAR UPADHYAYA, CJ

SEPTEMBER 30, 2026

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