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

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*Judgment reserved on: 20.07.2026**Judgment pronounced on: 17.09.2026**Judgment uploaded on: 17.09.2026*

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**CNR No : DLHC010346962007**

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W.P.(C) 3979/2007

DIRECTOR GENERAL WORKS CPWD

....Petitioner

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena, Mr. Mukesh Kumar Tiwari, Ms. Poonam Shukla and Ms. Reba Jena Mishra, Advs.

versus

THE GEN.SEC.ALL INDIA CPWD EMP

....Respondent

Through: Mr. Deepak Khadaria, Ms. Nidhi Garg, Advs.  
Mr. R.K. Kapoor, Ms. Aakriti Kapila and Mr. Rajat Kapoor, Advs.

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**CORAM:**  
**HON'BLE MS. JUSTICE SHAIL JAIN**

**J U D G M E N T**

**SHAIL JAIN, J.:**

1. The present Writ Petitions assail the common Award dated 02.01.2007 passed by the Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi, in I.D. Nos. 68/2004 and 69/2004. Since both petitions arise from the same Award and involve a common controversy, they are being taken up together.

**BRIEF FACTS**

2. The relevant facts, as borne out from the record, are that the workmen concerned in the two industrial disputes were engaged by the Central Public Works Department (“CPWD”) on a casual/daily-rated basis in its various divisions. The material placed before the Tribunal shows that the concerned workmen had rendered service on such a basis for several years before being regularised. The record also contains particulars showing that the workmen were regularised on different dates, depending upon the availability of sanctioned vacancies and the applicable eligibility and seniority criteria.

3. The grievance of the workmen was that, notwithstanding their subsequent regularisation, the period during which they had served on daily-rated basis was not being reckoned along with their regular service for the purposes of consequential and retiral benefits. It was their case that they had rendered continuous service during the said period within the meaning of Section 25-B of the Industrial Disputes



Act, 1947 (“the Act”) and that, having regard to the absence of any break between their daily-rated engagement and subsequent regularisation, the said period ought to be treated as part of their qualifying service.

4. According to the workmen, despite discussions with the departmental authorities, the issue remained unresolved. It was further contended that the workmen ought to have been regularised upon completion of 240 days of service in two consecutive calendar years, in accordance with the eligibility criteria stated to have been notified by the CPWD, and that their continued engagement for periods extending over several years on a casual basis amounted to an unfair labour practice.

5. The dispute was thereafter referred by the Ministry of Labour to the Tribunal under Section 10 of the Act by orders dated 07.04.2004. In I.D. No. 68/2004, the reference concerned the claim of Shri Om Prakash Shukla and the other workmen represented by the Union, while I.D. No. 69/2004 concerned Shri Laxmi Narain and the other workmen. The reference required the Tribunal to determine whether the demand for counting the service rendered on daily-rated basis along with regular service for the purposes of retiral benefits was legal and justified and, if so, to what relief the workmen were entitled.

6. Before the Tribunal, the Management opposed the claim. Its stand was that the workmen had not been retrenched but had subsequently been regularised by the Department and, therefore, the question of payment of retrenchment compensation did not arise. It was further pleaded that there was no policy of the Central Government providing for counting of casual service for retiral benefits. At the same



time, the Management brought to the notice of the Tribunal the Office Memorandum dated 10.09.1993 and the Scheme framed thereunder, which provided for conferment of temporary status upon casual labourers satisfying the conditions prescribed therein and, after regularisation, for counting 50% of service rendered under temporary status towards retirement benefits.

7. The Management further stated that the matter relating to the demand of the Union was under examination at the departmental level and that a draft had been prepared pursuant to discussions with the Union and forwarded for consideration of the concerned Ministries/Department. On that basis, the Management contended that the demand raised before the Tribunal was premature. The Union filed a rejoinder, evidence was led by both sides and the matter was thereafter heard by the Tribunal.

8. The Tribunal, after noticing the respective submissions, observed that several of the workmen had been regularised after six to twelve years of their initial engagement and that, in many cases, the total tenure of service was approximately thirty years. The Tribunal also took note of the contention that exclusion of the pre-regularisation period could materially affect the pensionary entitlement of the workmen.

9. The Tribunal ultimately held that the workmen were entitled to conferment of regular status after one year of their initial engagement and that 50% of the period of their daily-rated service was liable to be counted for retiral benefits. Accordingly, by the impugned Award dated 02.01.2007, the Management was directed to confer regular status upon the workmen in both I.D. Nos. 68/2004 and 69/2004 after one year of



their initial engagement and to count 50% of the period of daily-rated service for the purposes of retiral benefits within three months of publication of the Award.

10. Aggrieved by the aforesaid directions, the Department has approached this Court under Articles 226 and 227 of the Constitution of India.

11. During the pendency of the present proceedings, further material was placed before the Court concerning the treatment of pre-regularisation service for pensionary purposes. Among such material is a communication dated 29.09.2016 issued by the Directorate General, CPWD, which refers to pending industrial disputes and court cases concerning the counting of past service rendered on muster roll, hand receipt or temporary-status basis before regularisation and directs examination of such cases in the light of the applicable pensionary provisions, including Rule 14 of the CCS (Pension) Rules, 1972. The said material is considered only to the extent relevant to the legal framework governing the separate claim for retiral benefits and does not bear upon the question of retrospective regularisation.

### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

12. Learned counsel appearing for the petitioner-Department submits that the impugned Award is unsustainable in law, inasmuch as the Tribunal has granted a benefit which has no foundation either in the applicable service rules or in any statutory scheme governing the workmen. It is submitted that the workmen were initially engaged on casual/daily-rated basis, without reference to sanctioned posts and without following the applicable recruitment rules and were



subsequently absorbed/regularised against sanctioned vacant posts in accordance with the applicable rules, their eligibility and seniority. The regularisation so granted was accepted by the workmen and was never challenged by them.

13. Learned counsel submits that mere completion of 240 days of service cannot confer a right to regularisation or to a post. According to him, the Tribunal could not have evolved a one-year benchmark for conferment of “*regular status*” when no such rule, scheme or administrative instruction applicable to CPWD was shown to exist. Reliance is placed upon the decisions of the Supreme Court in ***Secretary, State of Karnataka Vs. Umadevi [2006 (4) SCC 1]*** , ***Gangadhar Pillai Vs Siemens Ltd reported as (2007) 1 SCC 533.***, ***State of Uttar Pradesh Vs. Kaushal Kishore Shukla [1991(1) SCC 691]*** , ***Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra & Ors.2005 (5) SCC 122]***, and ***Registrar General of India and Another Vs V. Thippa Setty and Others reported as (1998) 8 SCC 690***, to contend that regularisation cannot be claimed merely on the basis of length of service or completion of 240 days and, where regularisation is permissible, the date from which it operates must have a legal foundation.

14. On the question of retiral benefits, learned counsel submits that the concept of “*continuous service*” under Section 25-B of the Act cannot, by itself, create a right to have the pre-regularisation period treated as qualifying service for pension or retiral benefits. It is contended that the requirement relating to 240 days under the Industrial Disputes Act operates within the statutory scheme of that enactment and, by itself, does not confer a right to regular appointment or



regularisation.

15. Learned counsel further submits that the Tribunal's reliance upon the 1993 Scheme is misplaced. According to the petitioner, the Scheme confers the benefit of counting 50% service only where temporary status has actually been conferred under the Scheme and the employee is thereafter regularised. The petitioner contends that the workmen in the present case were not conferred temporary status under the Scheme and, consequently, the said provision cannot be invoked in their favour. The Scheme itself states that temporary status is available to eligible casual labourers in employment on the date of the Scheme and prescribes 240 days of service as one of the conditions for such status.

16. It is lastly submitted that the Tribunal's reliance upon the practice stated to prevail in the Railways was wholly unwarranted. CPWD and the Railways are governed by distinct service and pensionary regimes and there was no material before the Tribunal demonstrating any rule applicable to CPWD corresponding to the Railway provision relied upon. The petitioner submits that the Tribunal could not, by analogy, import the service conditions of another establishment and thereby create a pensionary entitlement for CPWD employees. The further reliance upon Article 39(d) of the Constitution of India is also assailed on the ground that the Directive Principles are not enforceable and cannot constitute the source of a specific pensionary entitlement.

17. On the aforesaid basis, learned counsel submits that the impugned Award is contrary to the applicable legal regime, suffers from patent illegality and warrants interference by this Court. It is



accordingly prayed that the common Award dated 02.01.2007 be quashed and set aside.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

18. *Per contra*, learned counsel appearing for the respondents submits that the writ petitions do not disclose any jurisdictional error, patent illegality or perversity warranting interference with the Award. It is contended that the petitioner's challenge proceeds on a misconception by conflating the question of regularisation with the distinct question of reckoning continuous service for the purposes of retiral benefits.

19. Learned counsel submits that the workmen had rendered continuous service on daily-rated basis for several years before their regularisation and that the Department had not treated the said period as part of their service for retiral purposes. According to the respondents, the workmen were never retrenched and there was no break between their daily-rated engagement and subsequent regularisation. It is therefore contended that the period of continuous service cannot be ignored merely because the formal status of the workmen changed subsequently.

20. Learned counsel places reliance upon Section 25-B of the Industrial Act and submits that the workmen had satisfied the statutory requirement of continuous service, including the requirement relating to 240 days' service. Reliance is placed upon *Employers In Relation To The Digwadih Colliery V/S. Their Workmen. AIR 1966 SC 75* , *Haryana State Electricity Board Vs. Randhir Singh, As Reported In 1991 (1) Labour Law Journal 1120* and *Workman Vs. Municipal Corporation Of Delhi, As Reported In 1987 (1) LLJ 243*. In Support of the Submission that service rendered by daily-rated workmen cannot be



disregarded merely because their engagement was not initially on a regular basis. It is contended that the consequences of continuous service extend to benefits calculated with reference to length of service.

21. It is further submitted that the Department itself had recognised, through the DoPT Office Memorandum dated 10.09.1993, the concept of temporary status for eligible casual labourers who had rendered 240 days of continuous service and had provided for counting of 50% of the service rendered under temporary status towards retirement benefits after regularisation.

22. Learned counsel submits that the petitioner's reliance upon the judgments concerning retrospective regularisation is misplaced. According to the respondents, ***Gangadhar Pillai V s. Siemens Ltd. (2007) 1 SCC 533*** dealt with retrenchment and reinstatement; ***National Institute of Health and Family Welfare v. Ramji Lal***, 2002 (7) AD (Delhi) 240 concerned seniority; and ***Registrar General of India & Anr. Vs. V. Thippa Setty & Ors. (1998) 8 SCC 690*** dealt with the principle that regularisation ordinarily operates prospectively so as not to prejudice regularly appointed employees. It is submitted that the respondents' claim, as pressed before this Court, is for retiral benefits arising from the period of service rendered before regularisation and not for retrospective seniority.

23. Learned counsel further submits that the prolonged retention of the workmen on casual/daily-rated basis, followed by their regularisation after periods extending to several years, resulted in serious prejudice to their pensionary entitlement. The respondents contend that the Department cannot take advantage of its own failure to regularise the workmen earlier and thereafter deny the benefit of the



service actually rendered by them. The Tribunal, according to the respondents, was therefore justified in moulding the relief so as to protect at least a part of the pre-regularisation service for retiral purposes.

24. It is also submitted that the Tribunal's reference to the Railway practice was only illustrative of the manner in which a long period of service rendered by similarly placed daily-rated workers could be recognised for retiral benefits. The respondents maintain that the impugned Award was intended to secure a just and equitable treatment of workmen who had rendered long and continuous service and who otherwise faced the prospect of retiring without adequate pensionary protection. The Tribunal itself had noticed that a substantial number of the workmen had rendered service for six to twelve years before regularisation and that their total service was, in many cases, close to thirty years.

25. Learned counsel accordingly submits that no interference is warranted with the Award, particularly with the direction concerning counting of 50% of the pre-regularisation service for retiral benefits. The writ petitions are, therefore, prayed to be dismissed.

### **ANALYSIS**

26. At the outset, it is necessary to delineate the scope within which the two directions contained in the impugned Award fall to be examined, since that standard governs the enquiry that follows. The jurisdiction of this Court under Articles 226 and 227 of the Constitution, when invoked against an adjudicatory determination of an Industrial Tribunal, is supervisory and not appellate. The Court does not sit in appeal over the findings of fact recorded by the Tribunal, nor



does it substitute its own assessment of the evidence merely because another view may reasonably be possible. As settled by the Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**, 1963 SCC OnLine SC 24;AIR 1964 SC 477, interference in certiorari jurisdiction is warranted where the Tribunal has acted without or in excess of jurisdiction, failed to observe the principles of natural justice, recorded a finding unsupported by evidence, or committed an error of law apparent on the face of the record. The restraint is of particular significance in relation to industrial adjudication. In **Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union**, (2000) 4 SCC 245, the Supreme Court cautioned against the writ court "liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact," and held that findings recorded by a duly constituted fact-finding authority are not liable to be disturbed merely because the material may appear insufficient or less persuasive to the writ court, or because another view may reasonably be possible.

27. The enquiry in the present proceedings must, therefore, be directed to whether the relief granted by the Tribunal has a sustainable legal foundation, whether the factual findings necessary to sustain that relief are supported by the material on record, and whether the reasoning adopted by the Tribunal discloses a legally sustainable path from the material before it to the conclusion reached. The question is thus not whether this Court might have reached a different conclusion, but whether the conclusions actually reached were ones which the Tribunal was legally entitled to reach. It is within this supervisory framework and having regard to the scope of the reference and the nature of the reliefs granted, that the controversy is examined



hereinafter.

28. The impugned Award may first be examined on its own terms. The Ministry of Labour, by its letters bearing Nos. **L-42012/173/2003-(IR (CM-II))** and **L-42012/174/2003-(IR (CM-II))**, both dated **07.04.2004**, referred the following points for adjudication. The points of reference were as follows:

*"Whether the demand of All India CPWD Employees Union in relation to counting of services rendered by the workmen Shri Om Prakash Shukla, Sb. Shri Mahabir Shukla and others (list enclosed) on daily rate basis, with their regular services for the purpose of all retiral benefits is legal and justified? If yes, to what relief they are entitled."*

*"Whether the demand of All India CPWD Employees Union relation to counting of services rendered by the workmen Shri Laxmi Narain, Sb. Shri Deri Charan and others (list enclosed) on daily rate basis, with their regular services for the purpose of all retiral benefits is legal and justified? If yes, to what relief they are entitled to."*

29. The reference thus specifically concerned the demand for counting the services rendered by the concerned workmen on daily-rated basis along with their regular service for the purpose of all retiral benefits and, if the demand was found to be legal and justified, the relief to which the workmen would be entitled.

30. The Tribunal answered the reference in the following terms:

*"The reference is replied thus: -*

*The demand of All India CPWD Employees Union in relation to counting of services rendered by the workmen Shri Om Prakash Shukla, 5/0. Shri Mahabir Shukla and 149 others (list 68/2004 enclosed) & workmen Shri Laxmi Narain, Sb. Shri Deri Charan and 45 others (ID No.69/2004) on*



*daily rate basis, with their regular services for the purpose of all retiral benefits is legal and justified. The workmen are entitled to conferment of regular status after one year of ' their initial engagement and 50% of the period on daily rated service shall be counted for retrial benefits just as pension and gratuity. The management is directed to confer regular status on the workmen of ID No.68/2004 and 69/2004 after one year of their initial engagement and to count 50% of the period on daily rated service for the purposes of retiral benefits within three months from the date of publication of the award.'*

*(Emphasis supplied)*

31. The operative portion of the Award thus granted two distinct reliefs. **First**, it directed that the workmen be conferred regular status after one year of their initial engagement. **Secondly**, it directed that 50% of the period of their daily-rated service be counted for retiral benefits. Although both directions arise from the same reference, they rest on distinct legal foundations. **The first concerns the legal basis, if any, for treating the initial daily-rated engagement as regular service from an anterior point in time. The second concerns whether service rendered prior to regularisation, while the workmen continued as daily-rated employees, could nevertheless be recognised for retiral benefits and, if so, under what statutory provision, service rule, scheme or administrative instruction.** The two aspects are, therefore, considered separately.

32. The reasoning adopted by the Tribunal requires notice before the legality of the relief granted by it is examined. The Tribunal treated the Scheme framed under the Office Memorandum dated 10.09.1993 as a “conception” and rejected the objection that the claim was premature



without examining the Scheme in relation to the individual service particulars of the workmen. It thereafter relied upon the rules applicable to employees of the Railways, reasoning that since the Railways and the CPWD were both “industries”, there was no reason why the rules and guidelines applicable to Railway employees should not be followed in the case of the workmen before it. On that basis, and by reference also to Articles 12 and 39(d) of the Constitution of India, the Tribunal directed that the workmen be accorded regular status after completion of one year of their initial engagement and further directed that 50% of the period of daily-rated service be counted for retiral benefits. These are, in substance, two distinct directions. The first concerns the legal character of the service and the date from which regular status could accrue; the second concerns the treatment of antecedent service for retiral benefits. They, therefore, require separate legal examinations.

33. The factual foundation on which the first direction has to be examined is borne out by the findings recorded in the Award. The Tribunal recorded that the workmen were initially engaged on a daily-rated basis when sanctioned posts were not available and that they were subsequently regularised when posts became available. The workmen were, therefore, not initially appointed against sanctioned posts and their subsequent regularisation took place at different points of time upon availability of vacancies. These findings are material because the direction under challenge does not merely recognise the subsequent regularisation; it requires regular status to be treated as having accrued one year after the initial daily-rated engagement. **The precise question, therefore, is whether any statutory provision, recruitment rule, service rule, Government order or enforceable scheme applicable**



**to these workmen made completion of one year of daily-rated service the event upon which regular status accrued.**

34. The governing constitutional position is settled by the Constitution Bench judgment in *Secretary, State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1. The Court emphasised that regular recruitment through the prescribed process is the rule in public employment and that temporary, casual or daily-wage engagement cannot be permitted to defeat the constitutional scheme governing appointment to public posts. In express terms, the Constitution Bench held that “Regularization cannot be said to be a mode of recruitment.” The limited exception recognised in paragraph 44 was confined to irregular, as distinguished from illegal, appointments of duly qualified persons against duly sanctioned vacant posts, where the employees had worked for ten years or more without the intervention of orders of courts or tribunals. The requirement of a duly sanctioned vacant post is thus integral to the exception. The Tribunal's own finding that the initial daily-rated engagement of the workmen was not against sanctioned posts takes the present case outside that limited exception. Length of service, by itself, could not therefore furnish the legal basis for converting that initial engagement into regular Government service.

35. The subsequent regularisation of the workmen in the present case at different points of time, upon availability of vacancies, also demonstrates that regular status was conferred when the requisite posts became available and not merely upon completion of a prescribed period of daily-rated service. Such subsequent regularisation cannot retrospectively be converted into regular service from a date unsupported by the governing framework. The fact that the workmen



continued to discharge duties before such regularisation may be relevant to the separate question whether any benefit is attached to that antecedent service under a specific statutory or administrative scheme; it cannot, without more, alter its legal character into regular Government service.

36. The direction of the Tribunal also cannot operate retrospectively in the absence of a legal provision authorising such treatment. In **Registrar General of India v. V. Thippa Setty**, (1998) 8 SCC 690, the Supreme Court explained that regularisation ordinarily operates prospectively, since giving it retrospective effect may disturb the seniority and other rights of employees who entered service through the regular recruitment process. Retrospective operation, therefore, cannot follow merely from the fact that substantial service was rendered before regularisation; it must have a specific legal foundation in the applicable rule or scheme.

37. Nor does completion of 240 days of service furnish such a foundation. In **Gangadhar Pillai v. Siemens Ltd.**, (2007) 1 SCC 533, the Supreme Court held that completion of 240 days does not, by itself, confer a right to regularisation or permanent status. The significance of 240 days under the Industrial Disputes Act is confined to the statutory scheme governing continuous service and retrenchment; it does not create a right to regular appointment. Thus, even assuming that the workmen satisfied the requirement of continuous service under Section 25-B, that circumstance could not, without an independent statutory or administrative provision, confer regular status upon them. The distinction sought to be drawn by the respondents on the ground that Gangadhar Pillai arose in the context of retrenchment does not detract



from the principle for which the decision is relied upon here, namely, that completion of the requisite number of days of work under Section 25-B of the Act does not, by itself, confer a right to regularisation.

38. The **Office Memorandum** dated 10.09.1993 and the Scheme framed thereunder stand on a different footing and also illustrate the distinction between temporary status and regular appointment. The Scheme provides for conferment of temporary status upon eligible casual labourers upon fulfilment of the conditions prescribed therein; it does not provide that completion of the qualifying period for temporary status, results by itself, in appointment to regular service. Clause 4(iv) further makes clear that conferment of temporary status does not, by itself, place the casual labourer on the permanent establishment or amount to regular appointment. The qualifying period prescribed for conferment of temporary status cannot, therefore, be treated as a provision under which regular appointment automatically accrues after one year of daily-rated engagement.

39. The Tribunal's reliance upon the rules applicable to Railway employees cannot supply the missing legal foundation. The service conditions governing employees of one department cannot be imported into the service of another department merely because both establishments fall within the expression “*industry*” for the purposes of the Industrial Disputes Act. The fact that both establishments fall within that expression does not render the service, pension or temporary-status rules applicable to employees of one establishment applicable to employees of another. If the workmen were entitled to regular status after one year, the Tribunal was required to identify the statutory provision, recruitment rule, Government order or binding scheme



applicable to CPWD employees which created such entitlement. The Award identifies no such CPWD provision. In any event, the Award does not identify any specific Railway provision which supports the further proposition that 50% of the entire period of daily-rated service, as distinct from service rendered under a recognised temporary-status regime, is reckonable for retiral benefits.

40. The reference to Articles 12 and 39(d) of the Constitution of India does not alter the position. Article 12 defines the expression “State” for the purposes of Part III; it does not itself prescribe the conditions on which a person engaged on a daily-rated basis acquires regular status in public employment. Nor can the principle of equal pay for equal work be invoked to convert an engagement made outside the prescribed recruitment framework into a regular appointment; the question of wage parity is distinct from the question of legal entitlement to regular status. Article 39(d) of the Constitution of India, therefore, could not furnish the missing source of power for the relief granted by the Tribunal.

41. The position that emerges is that regular status in public employment must flow from the governing constitutional and statutory framework, the applicable recruitment rules, or an enforceable scheme or Government order. A period of daily-rated or casual service does not, merely by efflux of time, undergo a change in its legal character into regular service. Where retrospective regularisation is claimed, there must be a specific legal foundation both for the entitlement to regular status and for its operation from the anterior date. **In the present case, no such foundation has been identified for treating completion of one year of initial daily-rated service as the point**



**from which regular status accrued.**

42. The facts found by the Tribunal reinforce this conclusion. The workmen were initially engaged on a daily-rated basis when sanctioned posts were not available and were subsequently regularised on different dates as vacancies became available. Such subsequent regularisation on different dates is also inconsistent with the proposition that regular status had uniformly accrued after one year of initial engagement. The Tribunal nevertheless proceeded to treat the length of the antecedent service as sufficient to confer regular status, without identifying any statutory provision or binding scheme producing such a consequence.

43. The Tribunal, therefore, erred in treating completion of one year of daily-rated service as sufficient to confer regular status upon the workmen. Neither the principle governing 240 days of continuous service, nor the rules applicable to Railway employees, nor Articles 12 and 39(d) of the Constitution, nor the 1993 Scheme itself, supplies the requisite legal foundation for treating completion of one year of daily-rated service as conferring regular status. **The direction in the Award according regular status to the workmen after one year of their initial engagement is accordingly unsustainable and is liable to be set aside.**

44. The second direction in the Award stands on a distinct legal footing. The rejection of retrospective regularisation does not, by itself, answer the separate question whether any part of the period preceding regularisation carries a retiral benefit under an applicable statutory or administrative framework. A period may retain its character as pre-regularisation service while nevertheless carrying a specified pensionary or retiral benefits if the governing rules or scheme so



provide. The enquiry must, therefore, be directed to the precise legal source governing the counting of such antecedent service. In the present case, that enquiry arises in relation to the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993, including Clause 5(v), as well as any independent pensionary provision applicable to the nature of the pre-regularisation service, including Rule 14 of the CCS (Pension) Rules, 1972, read with the Government decision referred to therein, if its prescribed conditions are satisfied. Continuity of employment or length of service, by itself, cannot create such a consequence.

45. The relevant framework is the Office Memorandum dated 10.09.1993 and the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993. The Scheme does not treat the entire period of casual or daily-rated engagement as regular service. It creates a distinct regime for conferment of temporary status upon casual labourers falling within the class specified therein and satisfying the prescribed conditions. Clause 4(i) contemplates conferment of temporary status upon casual labourers who were in employment on the date of issue of the Office Memorandum and who had rendered continuous service of at least one year, defined in terms of engagement for at least 240 days in a year, or 206 days in the case of offices observing a five-day week. Clause 5(v), in turn, provides that 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularisation. The two provisions thus operate at different stages. The qualifying period under Clause 4(i) concerns eligibility for temporary status; Clause 5(v) prescribes the retiral consequence attached to service rendered under temporary status



after regularisation. They cannot be treated as interchangeable. The Scheme further makes clear that conferment of temporary status does not by itself bring a casual labourer onto the permanent establishment unless selected through the regular selection process for Group 'D' posts

46. This distinction is material because the Tribunal directed that 50% of the entire period of daily-rated service be counted for retiral benefits. Clause 5(v), however, does not provide for counting 50% of every period during which a person remained a casual or daily-rated employee. The benefit is expressly linked to “*service rendered under temporary status*”. It follows that the first question is whether the concerned workman fell within the class contemplated by Clause 4(i) and satisfied the conditions prescribed therein. Only thereafter can the period capable of being regarded as service rendered under temporary status be identified and the consequence under Clause 5(v) be worked out. The Tribunal undertook no such exercise. Its blanket direction to count 50% of the daily-rated period was consequently not an application of Clause 5(v) to an identified period of temporary-status service, but a materially wider direction.

47. The applicability of Clause 4(i), read with the applicability provision of the Scheme, requires the casual labourer to have been in employment on the date of the O.M. The position of each workman on 10.09.1993 must, therefore, necessarily be examined individually. The workmen were not identically situated in this regard, since their initial engagements and subsequent regularisations took place at different points of time. A workman whose service had already been regularised before 10.09.1993 would stand in a different position from a workman



who continued to be engaged on daily-rated basis on that date and was regularised thereafter. In the former case, the workman would not be entitled to invoke Clause 4(i) and Clause 5(v) merely on the basis of the earlier daily-rated service, since he was no longer a casual labourer in employment on the date specified in Clause 4(i). In the latter case, however, the applicability of the Scheme would require examination on the basis of the conditions prescribed by Clause 4(i). The date of initial engagement is relevant to determining whether the prescribed period of continuous service had been completed; it does not, by itself, convert the entire antecedent period of daily-rated engagement into service rendered under temporary status. This conclusion, however, concerns the 1993 Scheme and does not foreclose consideration of an independent pensionary provision applicable to the nature of the pre-regularisation service.

48. A further factual aspect assumes significance in applying the 1993 Scheme. The petitioner-Department asserts that none of the concerned workmen was ever formally conferred temporary status under the Scheme and that the workmen were directly regularised at different points of time. The respondents, on the other hand, rely upon the Scheme and the length and continuity of the pre-regularisation service. Whether temporary status was in fact conferred upon any particular workman is, therefore, a threshold factual question which cannot be presumed either from the mere fact of prolonged daily-rated engagement or from the subsequent regularisation. The individual service records, including any order, register, service book entry or other contemporaneous record evidencing conferment of temporary status, shall accordingly have to be examined. If no temporary status



was conferred, the legal consequence of that position shall have to be determined under the Scheme and the other applicable pensionary provisions; the absence of a formal order cannot, however, be treated as equivalent to conferment of temporary status without first examining whether the Scheme itself and the applicable legal position support such a consequence.

49. The decision in ***Birma Devi v. Union of India***, W.P.(C) No. 9480/2021, decided by the Delhi High Court on 03.02.2025, does not answer that question in favour of either side. In that case, the petitioners had in fact been granted temporary status under the 1993 Scheme. The controversy arose because they were thereafter not regularised, and the respondents sought to rely upon the requirement in Clause 5(v) that 50% of temporary-status service would be counted for retiral benefits after regularisation. The Court noted that no exercise towards regular selection had ever been undertaken and held that the petitioners could not themselves regularise their services and that the respondents could not rely upon their own failure to regularise them to defeat the pensionary claim. The factual foundation of that decision is therefore materially different from the present case, where the question of the applicability of the 1993 Scheme and the consequences, if any, flowing from satisfaction of the conditions prescribed in Clause 4(i) have yet to be determined. ***Birma Devi(supra)*** may accordingly be relied upon only for the limited proposition that, where temporary status has otherwise been established and subsequent regularisation is dependent upon action by the employer, the employer cannot defeat the consequential pensionary claim merely by relying upon its own failure to undertake the requisite regularisation.



50. The subsequent decision of the Supreme Court in ***Bhikhani Devi & Ors. v. Union of India & Ors.*** (Arising Out of SLP (C) No(s).28802-28804 of 2019), also arose in the context of casual labourers who had in fact been conferred temporary status under the applicable Scheme. The Supreme Court held that a temporary-status casual labourer would be entitled to pensionary benefits on superannuation even in the absence of regularisation, subject to fulfilment of the applicable eligibility requirements. The decision is therefore relevant to the consequences flowing from an established temporary status. The factual foundation of that decision, however, was the actual conferment of temporary status, and the question arising in the present case as to the legal consequence of satisfaction of the conditions prescribed under Clause 4(i) of the 1993 Scheme, in a case where temporary status was not formally conferred, did not arise for determination before the Supreme Court.

51. The reliance upon Section 25-B of the Industrial Disputes Act, 1947, also does not alter this position. Section 25-B defines continuous service for the purposes of the provisions of that enactment in which that expression operates. A finding that a workman was in continuous service may consequently establish continuity of employment for the statutory purposes for which Section 25-B is relevant; it does not, without an independent provision in the applicable pensionary framework, convert such service into qualifying service for pension or retirement benefits. The same distinction applies to the 240-day requirement under Section 25-B and the 240/206-day requirement appearing in Clause 4(i) of the 1993 Scheme. The former operates within the statutory scheme of the Industrial Disputes Act; the latter is a



condition prescribed by the Scheme for temporary status. Continuity established under one statutory framework cannot, by itself, supply the missing condition under another.

52. The Office Memorandum dated 28.07.2016 must likewise be considered according to its own terms and within the framework of the 1993 Scheme. Its issuance cannot, merely by reason of the date on which it was issued, dispense with the foundational requirements of the Scheme or retrospectively convert ordinary daily-rated service into service rendered under temporary status. Its relevance, therefore, depends upon the workman first satisfying the substantive conditions of the Scheme. It cannot, by itself, support the Tribunal's blanket direction to count 50% of the entire period of daily-rated service. The Tribunal's approach also leaves unanswered a basic question: where a workman was regularised after completing the qualifying period of 240 days from the date of initial engagement, what was the period of service to which the 50% benefit was to be applied? The qualifying period of 240 days, by itself, does not constitute the service carrying the 50% benefit, and the Award discloses no basis for treating it as such. Nor does the Award identify any period of service rendered under temporary status to which the 50% benefit could be referable.

53. It is thus necessary to apply the aforesaid legal position to the individual service records of the workmen. In relation to the 1993 Scheme, the material particulars would include the date of initial engagement, the nature of the engagement, the position of the workman on 10.09.1993, whether the workman fell within the class of casual labourers to whom the Scheme applied, whether the qualifying-service requirement under Clause 4(i) had been fulfilled with reference to the



applicable 240-day or 206-day requirement, the date of subsequent regularisation, whether any order or other record evidences conferment of temporary status, and the period, if any, which can properly be regarded as service rendered under temporary status for the purposes of Clause 5(v). In relation to Rule 14, it would additionally be necessary to ascertain the source and manner of payment of the pre-regularisation service, whether the work constituted whole-time employment, whether it was of a type for which regular posts could have been sanctioned, whether the prescribed mode of payment was satisfied, whether the service was continuous and followed by absorption in regular employment without a break, and whether authentic service records are available for the period claimed. These matters are not merely computational; they determine whether, and under which legal provision, any part of the pre-regularisation service is capable of being reckoned for pensionary purposes.

54. The impugned Award does not contain the individual findings necessary to undertake that exercise. The Tribunal did not determine, workman-wise, who among the concerned employees was in casual employment on 10.09.1993, whether the prescribed qualifying service under Clause 4(i) had been completed, whether temporary status had been conferred or was otherwise required to be recognised under the Scheme, or what precise period constituted service rendered under temporary status for the purposes of Clause 5(v). Nor did it examine whether the pre-regularisation service of any of the workmen was paid from contingencies or whether the conditions governing the counting of such service under Rule 14 were satisfied. Instead, the Tribunal proceeded from the general fact of daily-rated engagement to the



Railway Rules and ultimately directed, in general terms, that 50% of the entire period of daily-rated service be counted for retiral benefits. The necessary factual foundation for applying the governing pensionary framework was therefore not recorded.

55. The Award passed by the Tribunal, having been rendered without considering the relevant facts pertaining to the individual workmen and the applicable legal position governing their entitlement, is **therefore not sustainable and is therefore set aside.**

56. The questions arising for determination of the retiral claims are, however, essentially factual and have to be examined with reference to the individual service records of the concerned workmen. These include the date and nature of their engagement, their status on 10.09.1993, fulfilment of the conditions prescribed under the 1993 Scheme, whether temporary status was conferred or is otherwise required to be recognised under the applicable legal position, and the period, if any, reckonable for retiral benefits. Where Rule 14 is invoked, the relevant conditions governing the nature and source of payment and the character and continuity of service would likewise require examination. This Court, exercising supervisory jurisdiction, cannot undertake such a workman-wise factual determination for the first time. Ordinarily, therefore, the appropriate course would be to remit these questions to the Industrial Tribunal.

57. The Court, however, cannot lose sight of the peculiar circumstances of the present cases. The disputes were referred to the Industrial Tribunal in 2004 and the impugned Award was passed in 2007. The writ petitions have thereafter remained pending before this Court for more than nineteen years in relation to the retiral claims of the



workmen. Having found that the Tribunal erred in granting the reliefs directed by the Award, this Court is equally conscious that remitting the matter at this stage for another round of factual adjudication would result in further delay in securing the retiral benefits of the workmen. In the peculiar facts of the present cases, such a course would not advance the ends of justice. This Court is conscious that individual entitlement under the 1993 Scheme would ordinarily require consideration with reference to the service record and the conditions prescribed thereunder. The relief is, therefore, being moulded as a special measure, confined to the workmen before the Court and the facts of the present cases, and shall not be understood as declaring any general entitlement to pensionary benefit for daily-rated service, for workmen, who are not before this court.

### **CONCLUSION**

58. Accordingly, having regard to the peculiar facts and circumstances of the present cases and the exceptional circumstances set out above, the Court modifies the relief as a special measure and issues the following directions, confined to the workmen involved in the present proceedings:

(i) The direction in the impugned Award conferring regular status upon the workmen after one year of their initial daily-rated engagement is **set aside**. The dates of subsequent regularisation shall not be antedated in the absence of any legal provision authorising retrospective regularisation.

(ii) The direction to count **50% of the entire period of daily-**



**rated service** for retiral benefits is **set aside**.

(iii) In respect of a workman who had already been regularised before 10.09.1993, no earlier daily-rated service shall be counted for retiral benefits merely by virtue of the 1993 Scheme.

(iv) In respect of a workman who was in casual/daily-rated employment on 10.09.1993 and was subsequently regularised, the retiral benefits shall be re-computed by taking into account 50% of the service rendered from 10.09.1993 until the date of regularisation, to the extent such service is reckonable under the 1993 Scheme. This direction shall operate on the basis of the service record of the concerned workman and shall not be construed as treating every period of daily-rated service as service under temporary status or as dispensing with the conditions of the 1993 Scheme. Any independent claim under Rule 14, where specifically invoked, shall be dealt with in accordance with the conditions applicable thereto.

(v) The consequential retiral benefits shall be computed in accordance with law. After considering the other retiral benefits already paid in respect of the relevant period, including payments made pursuant to the Office Memoranda dated **20.11.2023** and **10.05.2024**, wherever applicable.

(vi) Nothing contained herein shall confer regular status upon any workman from an anterior date. Completion of 240 days or



prolonged daily-rated service, by itself, shall neither confer regular status nor justify retrospective regularisation.

**(vii)** The aforesaid directions are issued **as a special measure in the peculiar facts and circumstances of the present cases** and are confined to the workmen who are parties to these proceedings. They shall not be understood as laying down any general entitlement to such benefit in other cases.

**(viii)** The aforesaid directions shall be complied with **within three months from the date of receipt of a copy of this judgment.**

**(ix)** The writ petitions stand disposed of in the above terms. There shall be no order as to costs.

**SHAIL JAIN, J.**

**SEPTEMBER 17, 2026**  
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