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

% **Decision delivered on: 27.08.2024**

+ **W.P.(C) 13037/2023 & CM APPL. 51502/2023**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. R.V. Sinha, Mr. Amit Sinha
and Ms. Shriya Sharma, Advocate

versus

VISHVAMBHAR SINGH

.....Respondent

Through: Mr. S.K. Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

W.P.(C) 13037/2023 & CM APPL. 51502/2023

1. By way of the present writ petition brought under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:

- “(i) Allow the present petition filed by the Petitioners under Article 226 of the Constitution of India;
(ii) Quash the impugned order/judgement dated 31.10.2022 in OA No. 199/2021 (Annexure-P-1) (Impugned) titled “Vishvambhar Singh Vs UOI & Ors.””

2. The petitioners have filed the present petition mainly on the following grounds:



“(iii) Because the Ld. Tribunal has proceeded to decide the issue based on presumption and assumption and ignoring the submissions on behalf of the petitioners herein in the reply and even noted in para 3 of the impugned judgement. It is further submitted that the reference to the policy of regularization framed by the DOP&T called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993" is irrelevant and extraneous in as much as neither the same has been part of the pleadings or argument on behalf of the parties and further that even para 3 thereof the OM specifically mentions that the same is not applicable in the case of Railways, Department of Telecommunications and Department of Post, who already have their own scheme. .V

(iv) Because the Id. Tribunal failed to consider that pension can be claimed and granted only in terms of the rule or policy of the Government and in the instant case, there is no policy or rule to consider portion of service rendered as an Extra Departmental Delivery Agent (BDDA) for grant of pension in terms of the rules called "Post and Telegraph Extra Departmental (Conduct and Service) Rules, 1964", amended vide Department of Posts, Gramin Dak Sevak (Conduct and Engagement) Rules, 2001 which was further amended vide the rules called "Department of Posts Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011" and further amended vide "Department of Posts Gramin Dak Sevaks (Conduct and Engagement) Rules, 2020".

(v) Because the respondent herein was not holder of a Civil post prior to his appointment as Postman on 10.1.2004 and in his case, he would be eligible and entitled for the NPS scheme, as made applicable to the employees who join Government service after 1.1.2004 and that prior to that he was neither employed as Daily rated casual worker against a permanent post and his status was just as a part-time worker as EDDA, specifically engaged in terms of the rule mentioned above.

(vi) Because otherwise, the Hon'ble Supreme Court of India has authoritatively held that the part-time worker can neither claim regularization nor parity with the regular employee. Refer: -

(a) State of Tamil Nadu Vs A. Singamuthu", reported as (2017) 4 see 113; and



*(b) Union of India & Ors Vs Ilmo Devi & Anr",
reported as 2021 SCC OnLine SC 899.*

*(vii) Because the judgement, referred to and relied upon by the
Id. Tribunal below, is neither relevant nor a binding precedent
in the facts and circumstances of the case.*

*(viii) Because implementation of the judgement is impossibility
In law in as much as the petitioners are being required to act
contrary to the rules and policy including the declaration of law
by the Hon'ble Courts, including this Hon'ble Court.*

*(ix) Because even otherwise the respondent herein has just
completed less than 8 years of service as a Postman which could
be the pensionable job, excluding his engagement as EDDA
prior to his appointment as such and under the CCS(Pension)
Rules, 2021 he would not be entitled even for pro-rata pension
and that in terms of the engagement rule of EDDA, the service
rendered by him is admittedly not pensionable."*

3. The respondent was appointed as Extra Departmental Delivery Agent (now *Gramin Dak Sewak*) at Bulandshahar on 01.01.1976. Thereafter, on 20.12.1998 he appeared in Limited Departmental Examination (LDCE) under 50% quota meant for Group-D employees.

4. Vide memo dated 15.03.1999, the result of the LDCE was declared and three candidates, namely, Shri Ram Phal Singh who secured 112 marks, Shri Inderjeet Singh and Shri Bhikam Kumar Sharma were declared successful.

5. Thereafter, the respondent along with one Shri Badle Singh filed OA No. 1898/1999 before the learned Tribunal which was allowed on 02.11.2000 directing the petitioners herein to correctly work out, notify and consider the case of the respondent and Shri Badle Singh for



appointment against the said post on the basis of their performance in the examination conducted in December 1998.

6. Being aggrieved, the petitioners challenged the aforesaid order before this Court by way of a Writ Petition which was dismissed. Consequently, in compliance of the directions of the learned Tribunal, the petitioners passed order dated 09.08.2001 wherein five candidates including Shri Badle Ram were declared successful but the respondent was not declared successful.

7. Being aggrieved, the respondent filed another OA No.642/2002, which was allowed by the learned Tribunal on 09.07.2002 thereby directing the petitioners to consider the respondent's claim for appointment against a reserved post. It was also directed that if and when the respondent was appointed as above, he would also be entitled to "consequential benefits" in terms of notional seniority/pay fixation on the basis of his performance in the 1998 examination".

8. The petitioners filed Writ Petition No.7199/2002 before this Court and the same was disposed of vide order dated 23.08.2004 modifying the decision of the learned Tribunal which reads as under:

"....we find it difficult to approve the other direction to pay him consequential benefits from the date three other candidates from the 1998 examination were appointed. This part of the direction is accordingly quashed and writ petition partly allowed."

9. Thereafter, the respondent was given the offer of appointment vide order dated 10.12.2004, which reads as under:



“In pursuance of order dt. 9.7.02 of this Tribunal at Principal Bench in OA No.642/02 Bishambhar Singh v/s 01 and others, and the Hon’ble High Court Delhi Order dt. 23.8.04 in WP(C) 7199/02, UOI v/s Bishambhar Singh, Shri Bishambhar Singh GDS MD Sarai (Bulandshahr) is hereby selected for appointment in Postman Cadre in the scale of Rs.3050-75-3950-80-4590 and allotted to your unit with immediate effect. Please issue appointment order immediately after completion of training.”

10. The respondent superannuated on 31.07.2011. Thereafter, vide order dated 17.08.2012, the petitioner No.2 in compliance of order of the Allahabad Bench of the learned Tribunal passed in OA No.562/2012, disposed of the representations dated 24.08.2010 and 07.10.2011 of the respondent.

11. The petitioner No.2 vide order dated 17.08.2012 decided that the respondent would not be given consequential benefits of seniority/pay fixation notionally. Relevant part of the said order is reproduced as under:

“In compliance of this order seniority of Shri Bishambar Singh was fixed vide Seniority memorandum (Gradation List of Postman cadre of Bulandshahr Division corrected upto 01.07.2004) in which Shri Bishamber singh was placed at serial no. 73 and according to which the entry date in the grade is 25.12.2004. As per rule 32E of P 8s T Volume IV (Appointment and promotion General rules) the seniority of an official in the cadre to which he belongs should be fixed according to the date of his permanent appointment in that cadre (Photocopy enclosed). A copy of this seniority memorandum was also sent to Shri Bishamber Singh vide this office letter No. LC/ New Delhi/CAT/ Bishamber Singh dated 02.01.2006. Hence in view of aforesaid observations the representation of Shri Bishamber Singh dated 24.08.2010 and 07.10.2011 are disposed of.”



12. The respondent before the learned Tribunal had relied upon the Government of India OM dated 17.02.2020 whereby the conditions for granting the benefits of old pension scheme were relaxed in terms of paragraph 3(ii), which reads as under:

"(ii) Some of the candidates selected through a common select process were issued offers of appointments and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 1.1.2004 due to administrative reasons/ constraints including pending Court/CAT cases."

13. The case of the respondent before the learned Tribunal was that the matter was squarely covered in terms of paragraph 3(ii) of the OM dated 17.02.2020, as the respondent was already in service prior to 01.01.2004 but because of the pending litigation, he could not be appointed and selected on regular basis. Hence, the respondent was entitled to be granted benefits of the "Old Pension Scheme". Further case of the respondent was that the respondent was appointed as a result of the examination conducted in December, 1998 and the eight individuals, as referred to above, whose results were declared before 01.01.2004, were allowed the benefits of old pension scheme on their superannuation and therefore, the respondent also ought to have been granted the same.

14. To buttress his arguments, learned counsel for the respondent, before the learned Tribunal, had relied upon various decisions of the hon'ble Supreme Court, which are mentioned in paragraph 2.16 of the impugned order of the learned Tribunal.



15. On the other hand, the case of the petitioners before the learned Tribunal was that the respondent and one Shri Badle Singh appeared in the examination held on 20.12.1998 for the post of Postman. The result of the said examination was declared on 16.03.1999, but due to lower position in the merit list, both of them could not be selected against the vacancies for the year 1998. Thereafter, the respondent approached various Courts of law for redressal of his grievance and due to pendency of his cases before this Court as well as the learned Tribunal, the order of appointment could be issued to the respondent only on 10.12.2004.

16. It was further contended by the petitioners before the learned Tribunal that the respondent claiming pension on the basis of his service with the petitioners as Extra Departmental Delivery Agent (EDDA) since 01.01.1976 was not permissible as per the GDS Conduct and Engagement Rule, 1964 applicable to him. According to the said Rule, there is no provision of pension for GDS employees as they are not considered as departmental employees and the daily duty hours of a GDS employee are 3.00 to 3.30 hours and not 8.00 hours per day as applicable to other employees covered under pension scheme of the Government. Hence, on the basis of the period during which the respondent was engaged as GDS on 01.01.1976; worked as EDDA since 01.01.1976 to 24.12.2004; and received Time Related Continuity Allowance (TRCA) every month and not any pay, his duty was fixed for minimum 3.00 to 3.30 hours only being part time job and not full time. Therefore, the



respondent could not claim any pension and other allowances, which were paid to other departmental employees.

17. The core issue that emerged for consideration before the learned Tribunal in the facts of the case was to the point as to “*whether the denial of ‘consequential benefits’ as per the order dated 23.08.2004 passed by the High Court would tantamount to denial of the retiral benefits, i.e., the pensionary benefits and leave encashment to the respondent*”.

18. The learned Tribunal observed that the concept definition of “consequential benefits” had nowhere been defined in any statutory provision/Act in service jurisprudence. The nearest word “benefit” could be determined and analysed in respect of the word “consequential relief”, which had been stated under the Court Fees Act, 1870 and also in terms of Section 34 of the Specific Relief Act, 1963.

19. As per Section 7(4)(c) of the Court Fees Act, 1870, wherein the word “consequential relief” has been notified and defined, reads as under:

“7. Computation of fees payable in certain suits.—The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:— (iv) In suits—

for a declaratory decree consequential relief.

— (c) to obtain a declaratory decree or order, where consequential relief is prayed.”

20. Relevantly, Section 34 of the Specific Relief Act, 1963 reads as under:

“34. Discretion of court as to declaration of status or right.



— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

21. The learned Tribunal had taken into consideration the decision dated 22.04.1932 of the Full Bench of the Allahabad High Court in ***Kalu Ram vs Babu Lai And Ors***, AIR 1932 All 485 wherein it was held as under:-

"In our opinion, the expression "consequential relief in Section 7(4)(c) means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a substantive relief. A consideration of all the Clauses (a) to (f). Sub-section 4, Court-fees Act leads to the same conclusion.

9. The Court has to see what is the nature of the suit and of the reliefs claimed having regard to the provisions of Section 7. Courtfees Act. If a substantive relief is claimed though clothed in the garb of a declaratory decree with a consequential relief, the Court is entitled to see what is the real nature of the relief and if satisfied that it is not a mere consequential relief but a substantive relief it can demand the proper court-fee on that relief irrespective of the arbitrary valuation put by the plaintiff in the plaint on the ostensible consequential relief. Suppose a plaintiff asks for a declaration that the defendant is liable to pay him money due under a certain bond and also asks for recovery of that amount; or suppose that he asks for a declaration that he is the owner of certain property and is entitled to its possession and



asks for recovery of its possession : surely the reliefs for the recovery of money or for the recovery of possession cannot be treated as a mere consequential relief which can be arbitrarily valued at any low figure and court-fees paid on that arbitrary valuation only. In our opinion where a suit is for the cancellation of an instrument under the provisions of Section 39. Specific Belief Act the relief is not a declaratory one. It falls neither under Section 7(4)(c) nor under Schedule 2, Article 17(3). but, under the residuary article, Schedule 1, Article 1. Court fees Act. We hold therefore that the court-fee payable on the first relief is governed by Schedule 1, Article 1."

22. The learned Tribunal further referred to the case of **Krishna Chandraji vs. Shyam Behari Lai**, AIR 1955 Allahabad 177, wherein the Allahabad High Court observed as under:

"5. According to our view the definition given in the Full Bench case does not mean that all reliefs which flow from the declaratory relief must amount to "consequential reliefs". The definition mentions four ingredients which go to make up the meaning of this expression "consequential relief. The first is that the relief should follow directly from the declaration given; the second is that the valuation of the relief be not capable of being definitely ascertained; the third is that the relief is not specifically provided for anywhere in the Act; and the fourth is that the relief cannot be claimed independently of the declaration as a substantive relief."

23. The learned Tribunal also referred to a provision in Order II Rule 2, which is statutory and has been accepted in our Country, without any criticism, for a fairly long time. Sub-clause (3) of the said Rule provides that if a person is entitled to more than one relief in respect of the same cause of action, he may sue for all or for any of such reliefs; but if he omits, except with the leave of the Court, to sue for any of such reliefs,



he shall not afterwards sue for the relief so omitted.

24. To such effect, reference was drawn to a judgment dated 03.03.2022 passed by the Hon'ble Supreme Court in Civil Appeal No. 1382 of 2022 namely ***Padhiyar Prahladi Chenaji (Deceased) through LRs vs Maniben Jagmalbhai (Deceased) Through LRs and Ors.***, wherein it was held as under:

"11. From the impugned judgment and order passed by the High Court, it appears that the High Court has not properly appreciated the distinction between a substantive relief and a consequential relief. The High Court has observed that in the instant case the relief of permanent injunction can be said to be a substantive relief, which is clearly an erroneous view. It is to be noted that the main reliefs sought by the plaintiff in the suit were cancellation of the sale deed and declaration and the prayer of permanent injunction restraining defendant No.1 from disturbing her possession can be said to be a consequential relief. Therefore, the title to the property was the basis of the relief of possession. If that be so, in the present case, the relief for permanent injunction can be said to be a consequential relief and not a substantive relief as observed and held by the High Court. Therefore, once the plaintiff has failed to get any substantive relief of cancellation of the sale deed and failed to get any declaratory relief, and as observed hereinabove, relief of injunction can be said to be a consequential relief. Therefore, the prayer for permanent injunction must fail. In the instant case as the plaintiff cannot be said to be in lawful possession of the suit land, i.e., the possession of the plaintiff is "not legal or authorised by the law", the plaintiff shall not be entitled to any permanent injunction.

11.1 An injunction is a consequential relief and in a suit for declaration with a consequential relief of injunction, it is not a suit for declaration simpliciter, it is a suit for declaration with a further relief. Whether the further relief claimed has, in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held not maintainable, no relief of



injunction can be granted. Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law."

25. In view of the above, learned Tribunal was of the view that if the relief was extended to legal rights of all kinds, it might, instead of multiplying litigation, lead to its reduction. Needless to say that certainty and security with respect to ordinary legal rights were as important as in the case of proprietary rights. The purpose of Section 34 of the 1963 Act was to afford relief from uncertainty and insecurity with respect to rights.

26. The learned Tribunal while dealing with the term "Consequential benefit" in public law, referred to ***Om Pal Singh vs Disciplinary Authority and Ors.***, (2020) 3 SCC 103, wherein a two Judge Bench of the hon'ble Supreme Court considered the case of ***J.K. Synthetics Ltd. vs. K.P. Agrawal***, (2007) 2 SCC 433, and applied the same holding that consequential benefits and continuity of service as also grant of back wages was not a natural consequence of reinstatement. It was noticed in the above decision that the ratio of ***Deepali Gundu Surwase vs Kranti Junior Adhyapak & Ors.***, (2013) 105 SCC 324 was not brought to the judicial notice of the learned Tribunal.

27. The learned Tribunal further referred to the case of ***Deepali Gundu Surwase*** (supra) wherein the hon'ble Supreme Court was dealing with a case where an employee of a school was terminated. The said termination was set aside by the learned Tribunal and reinstatement with



full back wages was directed. Upon challenge against the learned Tribunal's order, the quashing of termination was upheld by the High Court but the direction for back wages was set aside. Thereafter, the hon'ble Supreme Court while dealing with the said case, considered the case of ***Hindustan Tin Works Pvt. Ltd. vs Employees of Hindustan Tin Works Pvt. Ltd.***, (1979) 2 SCC 80, wherein it was observed that when termination is found to be invalid, award of full back wages is the normal rule. However, the hon'ble Supreme Court noted even in ***Hindustan Tin Works*** (supra) that there could be no straight jacket formula for awarding back wages.

28. It is important to note that in ***Deepali Gundu*** (supra), the Court further analyzed various other decisions on this issue, including ***J.K. Synthetics*** (supra) and culled out the position of law as under:

"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.*

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- iii) The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back*



wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

iv) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

v) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-a-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra)*.

vi) 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."

29. The learned Tribunal vide the impugned order observed that the decisions in **J.K. Synthetics** (supra) and **Deepali Gundu** (supra) were considered by two Division Bench decisions of this Court in **Mahabir Prasad vs DTC**, (2014) 144 DRJ 422 and **Jagdish Chander vs DTC**, 2020 LLR 754, wherein on the basis of the facts of the said case (**Mahabir Prasad vs DTC case**), reinstatement was directed by the Labour Commissioner with continuity of service but without back wages. Thereafter, the DTC reinstated the workman without any back wages and without any benefits of notional pay fixation, promotion, ACP, increments and withheld pension and terminal benefits also. Challenging the same, the workman claimed that since "continuity of service" was directed, he would be entitled to pension and other terminal benefits.

30. The learned Tribunal referred to the case of **Mahabir Prasad** (supra), wherein this Court observed as under:

*"20. The above discussion reveals that there appeared to be no standard pattern of directing how a reinstated employee is to be given the benefit after reinstatement. In **Deepali Gundu Surwase** (supra), for the first time, the restitutionary principle underlying reinstatement and other benefits was spelt out and a semblance of uniformity was attempted. If that is to be kept in mind, what is apparent in this case is that the petitioner had to battle for over a decade and a half to secure justice. The Labour Court held that the enquiry against him illegal; went into*



the material an found that the charge of misconduct was baseless. It consequently directed reinstatement without back wages. Whilst the denial of back wages is not in question, the Award directed continuity of service. If DTC's contention were to be accepted, the petitioner would stand doubly penalized for the delay in securing justice, plainly for no fault of his. The denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity and other terminal benefits. If these benefits are denied, the direction to grant continuity of service would be a hollow relief. Furthermore, to restore him in the pay scale at the stage of his termination would be to freeze him in a pay scale that is no longer existent, or at least unrecognizable. It is pertinent that a withholding of 2 increments for two years, with cumulative effect has been held to be a major penalty (imposable only after an enquiry) since the increments "would not be counted in his time-scale of pay" in perpetuity. In other words, the clock would be set back in terms of his earning a higher scale of pay, by two scales. See **Kulwant Singh vs State of Punjab**, 1991 Supp (1) SCC 504. Keeping this in mind, if the petitioner were to be restored in the pay scale at the stage of his termination, it would amount to withholding several increments, and thus be equivalent to imposing a compounded major penalty.

21. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. AGP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to provident fund etc. This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs."



31. Further, the learned Tribunal observed that in the case of **Jagdish Chander** (supra), reinstatement was directed with full back wages. Upon challenge, the High Court in LPA had modified the said order to deny back wages, but the DTC had agreed to not challenge reinstatement, and to grant the benefit of continuity of service and to compute pension accordingly. Thereafter, the workman was not given ACP benefits and various other benefits. The Division Bench in LPA while upholding the award on the basis of DTC's assurance that continuity of service would be given, the Court directed the Workman's pay scale to be fixed notionally by granting him increments and benefits under the ACP scheme and held as under:-

“28. Therefore, what becomes clear from a perusal of the judgment in Mahabir Prasad (supra) is that reinstatement with continuity of service is the norm. While in Mahabir Prasad (supra) the Labour Court had ordered reinstatement with continuity but without back wages, in the present case the Labour Court ordered both reinstatement and full back wages. The DB of this Court modified the Award only to the extent of denying the Petitioner full back wages but acknowledged that the intent of the Award was to grant the Petitioner continuity of service. This is plain from the operative portion of the order of the DB partly allowing DTC's LPA. It explained the rationale for denial of full back wages as follows: "In our considered opinion, when the corporation has agreed not to challenge the order of reinstatement, extend the benefit of continuity of service and compute the pension on the said factual backdrop. The CAT, in the impugned order, erred in denying the Petitioner the benefit of continuity in service upon reinstatement and in applying the law as explained in Mahabir Prasad (supra) that while this would not entitle him to promotions, the Petitioner would upon reinstatement be entitled to the increments on the pay scale he was drawing at the time of termination of his services and further that for the purpose of gratuity and pension



he would be treated as having been in service throughout.
30. *The CAT erred in referring to the decision of the Supreme Court in S. Narsagoud (supra) which has been squarely dealt with and rejected by a subsequent decision of the Supreme Court in Deepali Gundu Surwase (supra). In fact, the CAT failed to take notice of the aforesaid judgments in spite of the Petitioner raising this specific point in his RA No. 39/2016.* 31. *For the aforementioned reasons, the impugned orders of the CAT are hereby set aside. The Respondent/DTC is directed to: i. Fix the Petitioner's pay scale by notionally granting him the increments and benefits under the ACP Scheme to which he now stands entitled."*

32. By considering the above legal position, the learned Tribunal was of the opinion that an analogy could be safely drawn that the term "Consequential benefit" in public law would be akin to "Consequential relief" in private law. The term "consequential benefits" with reference to Service Jurisprudence except for "retiral benefits" would mean and include the following:

- (i) Back Wages/arrears of pay
- (ii) Increments
- (iii) HRA and CCA
- (iv) Notional Re-fixation of Pay upon reinstatement
- (v) Festival Advance/Flood Advance
- (vi) Productivity Linked Bonus/ Adhoc bonus variation in variable Dearness Allowance and/or any other admissible allowance as per Rule position.
- (vii) Interest
- (viii) ACP/MACP



(ix) Seniority

(x) Promotion

33. Accordingly, the learned Tribunal rightly observed that “it is a settled law that the pension which was being paid to the employees is not a bounty and it is for the them to divert the resources from where the funds could be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour” as held in the decision dated 11.01.2022 of the hon’ble Supreme Court in ***Punjab State Cooperative Agricultural Development Bank Ltd vs Registrar, Cooperative***. Accordingly, it was opined by the learned Tribunal that the grant of pension was a substantive and valuable right to an employee being a vested/accrued right in his favour as distinct from “consequential benefit”.

34. The learned Tribunal also referred to a decision of this Court in ***Om Prakash & Ors vs Delhi Jal Board***, 2015 XAD (Delhi) 448, wherein while considering a case where reinstatement was directed with immediate effect and whether in such a case regularization ought to have been given to the workman, it was held that “continuity of service” ought to be read into the relief of reinstatement and regularization was directed in accordance with the policy of the Management. Relevant paragraph of the said decision reads as under:

"18. In view of the aforesaid decisions, coupled with the fact that while granting the relief of reinstatement even the back wages were also granted. That being so, the mere fact that along with the relief of reinstatement the word "continuity of service"



has not been mentioned does not mean that the said relief was not granted. That being so, the mere fact that the word "with immediate effect" was mentioned in the award does not mean that the Court impliedly declined the relief of continuity of service."

35. It was not in dispute before the learned Tribunal that full back wages had been awarded and granted to the respondent vide the order of the learned Tribunal which had been modified to the extent that he shall not be entitled to "Consequential benefits". The facts and circumstances of the case before the learned Tribunal was that since order of full wages was not modified by this Court, it would have never contemplated and intended of giving restrictive meaning so as to deny the retiral benefits "pensionary benefits" and "leave encashment".

36. Accordingly, the learned Tribunal relied on a decision of the hon'ble Supreme Court in the case of **Netram Sahu vs State of Chhattisgarh** wherein the hon'ble Court held that after regularization, the entire period of service shall be counted for purpose of fixation of pensionary benefits.

37. The learned Tribunal also relied on the decision dated 07.04.2015 of the hon'ble Supreme Court in the case of Civil Appeal No. 3348 of 2015, **Secretary, Minor Irrigation Deptt. & RES Vs Narendra Kumar Tripathi**, wherein the hon'ble Court had allowed all the benefits of ad-hoc services rendered for the purposes of reckoning seniority and other consequential benefits.

38. Further, the learned Tribunal relied on a decision dated 18.08.2022



of the hon'ble Supreme Court in the case of Balo Devi Vs. State of H.P. & Ors in Civil Appeal No. 4792/2022 (out of SLP (Civil) No. 18830/2021) wherein it was held as under:-

"The basic question raised in the instant matter is about the entitlement of the husband of the appellant and after his death, the entitlement of the appellant to pension.

2. The matter concerning the rights of a person who had rendered service on daily wage-basis in the State of Himachal Pradesh and whether such daily wage service could be counted for pension was considered by this Court in Civil Appeal No.6309 of 2017 (Arising out of SLP(C) No.34038 of 2012). The order passed by this Court on 08.03.2018 disposing of said matter may be extracted hereunder for facility:

- "1. Heard learned counsel for the parties.*
- 2. The appellants represent class of Class-TV employees who were recruited initially as daily wagers such as Peon/Chowkidar/Sweeper/Farrash/Mal is/Rasoia etc. Their services, thereafter, were regularized pursuant to the decision of this Court in Mool Raj Upadhyaya Vs. State of H.P. and Ors. 1994 Supp (2) SCC 316 under a Scheme. Regularization was after 10 years of service.*
- 3. It is undisputed that the post regularization. An employee who had served for 10 years is entitled to pension for which work charge service is counted. Earlier, in terms of O.M. dated 14.05.1998, 50% of daily-wage service was also counted for pension after regularization but the rules have undergone change.*
- 4. Since the appellants have not rendered the requisite 10 years of service they have been denied pension.*
- 5. Even though strictly construing the Rules, the appellants may not be entitled to pension. However, reading the rules consistent with Articles 14, 38 and 39 of the Constitution of India and applying the doctrine of proportionate equality, we are of the view that they are entitled to weightage of service rendered as daily wagers towards regular service for the purpose of pension.*
- 6. Accordingly, we direct that w.e.f 01.01.2018, the*



appellants or other similarly placed Class-TV employees will be entitled to pension if they have been duly regularized and have been completed total eligible service for more than 10 years. Daily wage service of 5 years will be treated equal to one year of regular service for pension. If on that basis, their services are more than 8 years but less than 10 years, their service will be reckoned as ten years.

7. *The appeal as well as special leave petitions are disposed of in above terms."*

39. In addition to the above, the learned Tribunal also referred to Casual Labourers (Grant of Temporary Status and Regularisation) Scheme floated by Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel and Training), which is reproduced as under:

1. *This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993."*
2. *This Scheme will come into force w. e. f. 1.9.1993.*
3. *This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.*
4. *Temporary Status*
 - (i) *Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (205 days in the case of offices observing 5 days week).*
 - (ii) *Such conferment of temporary status would be without reference to the creation/availability of regular Group D' posts.*
 - (iii) *Conferment of temporary status on a casual labourer*



would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

- (iv) *Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.*

5. Temporary status would entitle the casual labourers to the following benefits:-

- (v) *50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.*

40. Undisputedly, an earlier OA No. 1998/99 was allowed by the learned Tribunal on 02.11.2000, after which, a Writ Petition filed by the petitioner No.1/Union of India against the decision of the learned Tribunal was dismissed in *limine* on 26.02.2001. When the petitioners did not comply with the order dated 02.11.2000 of the learned Tribunal, the same led to filing of the Contempt Petition No.21/2001 which was dismissed vide order dated 14.12.2001 with liberty. Thereafter, the respondent preferred another OA No.642/2002 which was allowed vide order dated 09.07.2002. The same was challenged by the petitioners herein in Writ Petition No.7199/2002 which was partly allowed by this Court wherein this Court directed as under:

“....we find it difficult to approve the other direction to pay him consequential benefits from the date three other candidates from the 1998 examination were appointed. This part of the direction is accordingly quashed and writ petition partly allowed.”



41. Thereafter, the petitioners issued an Office Order dated 10.12.2004 wherein in pursuance of order dated 09.07.2002 of the learned Tribunal in OA No.642/2002 titled *Bishambhar Singh vs UOI and Others* and this Court's order dated 23.08.2004 in WP(C) 7199/2002 titled *UOI vs Bishambhar Singh*, the respondent was selected for appointment in Postman Cadre in the scale of Rs.3050-75-3950-80-4590.

42. Thereafter, the respondent made a representation dated 24.08.2010 but the same was not decided by the petitioners, after which, he filed OA No. 562/2012 before the Allahabad Bench of the learned Tribunal. The learned Tribunal vide order dated 27.04.2012 directed the petitioner No.2 to decide the representation of the respondent. In compliance of the Tribunal's order, the petitioners passed order dated 17.08.2012 disposing of the respondent's representations dated 24.08.2010 and 07.10.2011.

43. Being aggrieved, the respondent challenged the aforesaid order dated 17.08.2012 wherein the representation of the respondent had been disposed of.

44. It is pertinent to mention that vide DoP&PW OM dated 17.02.2020 on the subject "Coverage under Central Civil Services (Pension) Rules, 1972, in place of National Pension System, of those Central Government employees whose selection for appointment was finalized before 01.01.2004 but who joined Government service on or after 01.01.2004". Though strict extenso of the said OM shall not be applicable to the facts of the case before the learned Tribunal inasmuch



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as the respondent was already working in same category or the other, i.e. casual or otherwise with the petitioners.

45. It is pertinent to note that the office order regarding the respondent's appointment came to be passed only on 10.12.2004 in compliance of the directions dated 09.07.2002 in the OA No.642/2002 and also directions passed by this Court in Writ Petition decided on 23.08.2004.

46. The learned Tribunal observed that in the light of the Circular and more particularly Clause-2 (iii) of OM, the respondent could not be appointed due to administrative constraints including pending cases before the Courts or learned Tribunals.

47. In view the above discussion and settled law as discussed above, we find no illegality and perversity in the order of the learned Tribunal. Consequently, finding no merit in the present petition, the same stands dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 27, 2024/as

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