IN THE COURT OF MS. NAVITA KUMARI BAGHA
PRESIDING OFFICER, INDUSTRIAL TRIBUNAL NO. 01,
ROUSE AVENUE DISTRICT COURT, NEW DELHI

DLCT130073122024

POIT No.	123/2024
CNR No.	DLCT13-007312-2024
Date of institution	12.12.2024
Date of Award	29.09.2026

Harivansh Singh
S/o Sh. Chandrika Prasad Singh
Working as Chowkidar,
BMID No.95075519.
R/o A-13, 3rd Floor, Bunkar Colony,
Deep Chand Bhandu Hospital, Ashok Vihar,
Phase-4, North West Delhi-110052

Through

General Secretary
Municipal Employees' Union (Regd. No.793 dated 12.07.1961)
Aggarwal Bhawan, G.T. Road,
Tis Hazari, Delhi-110054

.....Workman/Claimant

Versus

The Management of Municipal Corporation of Delhi
Through its Commissioner Dr. S.P. Mukherjee

J.L. Nehru Marg, Civil Centre,
Minto Road, New Delhi-110002

.....Management

AWARD

1. Vide Reference No. F-24(150)/ID/30/CO/CD/2024/500 dated 23.10.2024, the following Reference from Deputy Labour Commissioner was received on 12.12.2024 for adjudication, sent by him U/Sec.10(1)(c) and 12(5) of Industrial Disputes Act, 1947 (hereinafter referred to as "I.D. Act") in respect of industrial dispute between the 22 Workmen (as mentioned in Annexure A of Reference) (the name of present workman i.e. Harivansh Singh is mentioned at Serial No.9 of said Annexure) and Management i.e. Municipal Corporation of Delhi:

> *" Whether the act of management of not regularizing services of Sh. Harivansh Singh S/o Sh. Chandrika Prasad Singh & 21 Ors. (As per Annexure-A), since the dates of joining, is legal or justifiable; and if not, the demand of workers for paying them the entire difference of salary on the principle of "Equal Pay for Equal Work" from their initial date of joining, with all consequential benefits thereof, is legal and justified; and if so, to what relief are they entitled and what*

directions are necessary in this respect?

Whether non-payment of overtime wages for overtime services rendered by the workmen till now at the rate of double of the wages from their initial date of joining is legal and justified? If no, to what relief the workmen are entitled to and what directions are necessary in this respect?"

2. Notice of aforesaid Reference was issued to the Workmen and after service of notice, joint Statement of Claim was filed by them on 20.02.2025. In workmen's evidence, only one witness i.e. WW-1 Harivansh Singh was examined by workmen. At the stage of final arguments, my Ld. Predecessor directed for registration of Statement of Claim of 22 workmen separately. The brief facts as stated in the Statement of Claim are as follows:

2.1 That the workman has been working as Chowkidar in schools of management w.e.f. 19.03.2008 and he has been working continuously and uninterruptedly from the said date. He has been paid minimum wages as revised from time to time by the government. He has been denied regular pay scale and other benefits, though he has been performing same duties, for same hours and carries the same responsibilities as those of Chowkidars who are

treated as regular Chowkidars by the management. Though the work of the workman is perennial in nature and he has been working continuously, but the management has treated him as daily wager/leave-substituted Chowkidar with the object to deny him his legitimate wages and status.

2.2 The management has been exploiting him in extreme manner as in schools which have been working in single shift, the workman has been working from 1.00 p.m. to 8.00 a.m. i.e. for 19 hours and in schools which have been working in double shift, he has been working from 5.30 p.m. to 8.30 a.m. i.e. for 15 hours and on Sundays and other holidays, he has been working round the clock, but despite that he has never been paid any overtime wages.

2.3 That despite working for long years with the management, his services have not been regularized. He has prayed for regularization of his services and payment of dues of salary on the principles of "Equal Pay for Equal Work" and payment of overtime wages on the following grounds:

(i) Because non-regularization of his services and non-payment of overtime wages is violative of Articles 14, 21, 23 and 39(d) of the Constitution of India.

(ii) The nature of work of workman is perennial and regular whereas larger number of posts of Chowkidars are lying vacant with the management.

(iii) Because the similarly situated co-workers, who by their fortune, became employees of East Delhi Municipal Corporation after trifurcation of erstwhile MCD, have already been regularized in their service whereas the present workman has been discriminated and his services have not been regularized and he has not been paid equal remuneration by the management, though he has been doing the identical work and of same value as the former have been doing and the same amounts to unfair labour practices as provided in Sec.2(ra) r.w. Item No.10 of Fifth Schedule and r.w. Sec.25T punishable U/Sec.25U of the I.D. Act 1947.

(iv) Because the workman has acquired the status of permanent employee out-rightly from the date of his joining after completion of 90 days of continuous service as prescribed in the Model Standing Orders framed under the "Industrial Employment (Standing Orders) Act, 1946 and even otherwise, he is entitled for regularization after completion of 240 days of continuous employment on regular basis as held

by the Hon'ble Supreme Court in Oil and Natural Gas Corporation Ltd. (ONGC) Vs. Petroleum Coal Labour Union & Ors., (2015) IILJ 257 SC.

(v) Because the workman has been performing the same nature of duties with same working hours and responsibilities as his regular counterparts, who are getting their salary in regular pay scale alongwith all allowances.

(vi) Because the management has made him to work for 15 hours/19 hours on daily basis and to work round the clock during holidays but has not paid him any overtime wages.

3. Notice of aforesaid Statement of Claim was issued to the Management and after service of notice, Written Statement was filed by the Management on 13.05.2025. The briefs facts as narrated in Written Statement are as follows:

3.1 That the claim filed by workman has not been properly espoused by any Union and as such the dispute is not maintainable.

3.2 That the workman is only leave-substitute Chowkidar engaged for specific period and he is estopped from claiming the benefits of regularization and other benefits like "Equal Pay for Equal Work" as

he himself has agreed to be engaged as leave substitute Chowkidar.

3.3 The workman is estopped from claiming his regularization as the management has its own policy of regularization i.e. Phased Manner Regularization Policy as per which the management regularizes its daily-wage employees as per availability of the posts and funds and that too strictly as per their seniority.

3.4 That the daily wagers are not entitled to salary and increment, etc. payable to the employees working on regular basis.

3.5 That the reference is bad in law as the matter has been referred without application of mind.

3.6 That the workman was/is leave substitute Chowkidar who has been given duty when the regular Chowkidar used to be on leave and he has not worked for 240 days in any calendar year and thus he is not entitled to relief claimed by him. Since, he is leave-substitute Chowkidar, therefore he cannot be equated with regular Chowkidars as he has entered into a contract fully knowing that periodic work will be taken from him.

3.7 It is denied that he has worked in double shift i.e. for 15 hours per day or round the clock on Sundays and other holidays. It is denied that the workman has acquired the status of permanent employee

from the initial date of his joining or that he has been meted out with any discrimination or that there is any violation of any Standing Orders or that there is any violation of Articles 14, 21, 23 and 39(d) of Constitution. It is denied that any vacant post of Chowkidar is lying with the management.

4. Rejoinder to Written Statement was filed by workman on 07.08.2025 wherein, while denying the averments of the management, and reiterating and reaffirming the contents of the Statement of Claim, he submitted that his claim has been properly espoused by the Union namely Municipal Employees' Union (Regd. no.793 dated 12.02.1961) and the Union has already passed resolution dated 23.12.2023 for espousing his claim. He has further submitted that the Phased Manner Regularization Policy of the management was adopted in the year 1978 as one-time measure to regularize the services of excess workers who were engaged on temporary basis by the management and the sole purpose behind adopting the said policy was to absorb all such workers in the regular services, but subsequently, the management misused the said policy by persistently engaging workers on daily-wages for work of a permanent nature and circumventing the regular and

permanent appointments.

5. After completion of pleadings, the following issues were framed by the Ld. Predecessor Court vide order dated 07.08.2025:

1. Whether the present claim has not been properly espoused by any Union? OPM

2. As per terms of reference. OPW

3. Relief.

6. In workman's evidence, the workman has examined only one witness i.e. WW-1 Harivansh Singh. WW-1, in his affidavit of evidence, while reiterating and re-affirming the contents of the Statement of Claim, in order to prove workman's case, has exhibited the following documents:

(i) **Ex.WW-1/1** - Copy of Espousal.

(ii) **Ex.WW-1/2** - Copy of Statement of Claim filed before the Conciliation Officer.

(iii) **Ex.WW-1/3 (Colly.)** - Copies of Sanction Orders issued by

the management to the workmen.

(iv) **Ex.WW-1/4** - Copy of Work Experience Certificate dated 27.10.2022 issued by management to workman namely Sant Kumar.

7. During his cross-examination by AR of management, the WW-1 has deposed that he had joined the management in the year 2008, however, he denied the suggestion that he was appointed as a leave substitute. He has voluntarily said that he has been working continuously from his initial date of joining till date. He has further deposed that he has read the contents of letter dated 27.03.2008 and understood the same and that he has not challenged the contents of the said letter except through the present case. He has further deposed that he is member of Municipal Employees' Union and placed on record the espousal passed by union i.e. **Ex.WW-1/1**. He has denied the suggestion that the said espousal is not valid or that he is not a member of Municipal Employees' Union.

8. In management's evidence, the management has examined only one witness i.e. MW-1 Sh. Vijay Singh Meena, Assistant Director (Education), West Zone, MCD. In his affidavit of evidence i.e.

Ex.MW-1/A, he has reiterated and re-affirmed the contents of Written Statement of management. During his cross-examination by the AR of workman, he has deposed that the details of 22 workmen given in para-1 of Statement of Claim are correct. He has admitted it as correct that all the concerned workmen are posted in the schools of MCD. He has further deposed that some of the schools of MCD function from 8.00 a.m. to 1.00 p.m. and some of them function from 7.30 a.m. to 12.30 p.m. and some of them function from 1.00 p.m. to 6.00 p.m.; that the schools which function in single shift i.e. from 8.00 a.m. to 1.00 p.m., the workmen/chowkidar come for duty at 4.00 p.m. and perform till 8.00 a.m. in the next morning. He has admitted it as correct that the single-shift schools are closed on Sundays and in that situation, concerned workmen perform their duties starting from 4 p.m. on Saturday to 8.00 a.m. of following Monday; that on second Saturdays the schools are closed and in that case, these workmen perform their duties from 4.00 p.m. of Friday to 8.00 a.m. of following Monday; that on gazetted holiday as well as on normal holiday, the workman perform round the clock duty till the opening of the school; that during summer vacation as well as winter

vacation, these workmen perform round the clock duty from closing of the school till the opening of the school. He has further admitted it as correct that where the MCD schools are working in two shifts, the concerned workmen are performing their duties from 8.00 p.m. to 8.00 a.m. next morning; that as far as other holidays are concerned, these chowkidars also work round the clock from closing of the school till opening of the school.

9. He has further deposed that MCD schools function for about 222 days in a year and for remaining 143 days, the schools remain closed. He has admitted it as correct that during 143 days, these workmen perform round the clock duties; that these chowkidars are responsible for any damage or theft happen to the municipal property of the management and during these days, if any damage or theft happens then their services are liable to be terminated/discontinued by the management. He has further deposed that the concerned workmen are not given weekly paid rest/holiday. He has deposed that the concerned workmen work for 26 days in a month and the management give salary of 26 days only and they are given rest for a day in a week for which no salary is

given to them.

10. He has further admitted it as correct that the normal working hours are 8 hours per day; that MCD does not give any overtime allowance to anybody who performs duty beyond 8 hours per day; that the concerned workmen have not been given any overtime charges for the work performed by them beyond 8 hours per day. He has further admitted it as correct that the nature of work and responsibilities of the concerned workmen are same and identical to those chowkidars who are treated as regular and permanent and paid their salary in the regular pay scale. He has also admitted it as correct that in MCD, the posts of chowkidars are sanctioned posts and carry the regular pay scale alongwith attendant benefits. He has further admitted it as correct that the concerned workmen have been paid only minimum wages, fixed and revised from time to time under the Minimum Wages Act for un-skilled category, whereas the regular chowkidars have been paid 2½ times more salary and other benefits than these concerned workmen. He has also admitted it as correct that the concerned workmen have not been given any Earned Leave, Casual Leave, Sick Leave, etc. He has further admitted it as

correct that the job of the chowkidars is continuing in the schools of MCD since 1958 and likely to continue in future. This witness was shown the court record and after seeing the same, he deposed that he cannot tell if the workmen have not worked continuously and un-interruptedly from their initial date of joining. He has further admitted it as correct that all the service records including the attendance, etc. are with the management, under their control and possession. However, he has denied the suggestion that the management has not filed the said records as it would prove the case of the workmen that they have worked continuously and un-interruptedly from the initial date of joining till date.

11. He has admitted it as correct that the management has not filed any record to show that any regular employee was on leave and these workmen were employed during his leave periods. However, he has denied the suggestion that the same is not filed as it does not exist or that these workmen are working against the vacant and permanent posts of chowkidars carrying the regular pay scales. Regarding the espousal document i.e. **Ex.WW-1/1**, he has deposed that he has no clue about the said document and he cannot comment

about the correctness of the same nor can find any flaw in it. He has further deposed that as per document dated 01.11.2007, the workman has given undertaking that he will not claim regularization/overtime-wages/equal pay for equal work. He has denied the suggestion that the management has indulged in unfair labour practices by not granting the status and salary of regular employee to the concerned workmen.

12. I have heard the final arguments from Sh. Rajiv Aggarwal, AR of Workman and Sh. Devendra Kumar Gahtori, AR of Management and perused the record.

13. My issue-wise findings are as follows:

ISSUE NO.1

Whether the present claim has not been properly espoused by any union?

14. The onus to prove this issue was on management. But apart from the bald assertion that the claim is not properly espoused by any union or that the espousal is invalid, the management has not led any evidence to prove the same. The AR of workman, on the other

hand, has submitted that the workman is a member of the Municipal Employees' Union and that the said union has duly espoused his industrial dispute.

15. Let us see what is meant by "industrial dispute". The definition of industrial dispute has been given in Sec.2(k) of I.D. Act which reads as follows:

> *"Section 2(k) – 'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."*

16. It is clear from the definition of industrial dispute that only collective dispute is an industrial dispute. Under Sec.10 of I.D. Act, the appropriate government can refer an industrial dispute to the Industrial Tribunal or Labour Court. If there is no industrial dispute, the same cannot be referred. The dispute between an individual employee and the management cannot be termed as industrial

dispute. However, there is one exception to this rule. That is incorporated in Sec.2-A of I.D. Act. As per said provision, in case of discharge, dismissal, retrenchment or termination, the individual employee can file case before the Industrial Tribunal or Labour Court. But for referring a dispute under Sec.10 of I.D. Act, it is essential for the workman to show that his individual industrial dispute has been sponsored or espoused by the union of the workmen or by a number of employees. It is also held in **Prakash & Ors. Vs. Superintending Engineer (ELEL) & Ors., 2001 (89) FLR 458** that an individual can raise a dispute only for removal, termination or dismissal, but if the workman wants to raise a dispute for his absorption or regularization, that can only be done through the Union on behalf of workman or by a number of workmen. The present case pertains to reference sent under Sec.10 of I.D. Act and therefore, the exception of Sec.2-A is not applicable in the present case.

17. The definition of industrial dispute shows that before any dispute, raised by any person, can be said to be an industrial dispute, it must be shown that it is connected with the employment or non-

employment of that person. Though in the definition of industrial dispute, the word 'workmen' has been used but the Hon'ble Supreme Court has held in **Workmen of Dharam Pal Prem Chand (Saughandhi) Vs. Dharam Pal Prem Chand (Saughandhi), AIR 1966 SC 182** that this definition may take within its sweep a dispute between a single workman and his employer, because the plural, in the context, will include the singular also. It has been held in catena of judgments that for validly referring a dispute between a single employee and his employer under Sec.10 of I.D. Act, it is necessary that it should have been taken up by the Union to which the employee belongs or by a number of employees. (Reliance is placed on (i) ***Central Provinces Transport Service Ltd. Nagpur Vs. Raghunath Gopal Patwardhan***, AIR 1957 SC 104; (ii) ***Workmen of Dharam Pal Prem Chand (Saughandhi) Vs. Dharam Pal Prem Chand (Saughandhi)***, AIR 1966 SC 182; (iii) ***J.H. Jadhav Vs. M/s. Forbes Gokak Ltd.,*** AIR 2005 SC 998). Thus, it is settled law that a dispute between an employer and a single employee cannot, by itself, be treated as an industrial dispute, unless it is sponsored or espoused by the Union of workmen or by a number of workmen.

18. Now the question arises as to how the espousal can be inferred? There is no particular form prescribed for espousal. The Hon'ble Supreme Court has held in **J.H. Jadhav Vs. M/s. Forbes Gokak Ltd., AIR 2005 SC 998** that there is no particular form prescribed to effect espousal and the Union must normally express itself in the form of a resolution which should be proved if it is in issue. It has been held by Hon'ble Delhi High Court in **Management of M/s. Hotel Samrat Vs. Govt. of NCT, 2007 (136) DLT 290** that if the union had passed a resolution or appreciable number of workmen had approached the union and raised the demand in respect of regularization of the workman, it could be said that there was an espousal of the cause of the workman. In the case-law titled as **Omji Srivastava Vs. PWD/CPWD, 2023 (2) LLJ 406**, the workmen had proved Statement of Claim filed by Union on behalf of workmen before Conciliation Officer (Ex.WW-2/1), Legal Notice issued by Union (Ex.WW-2/2), Authorization letter issued by workmen to Union (Ex.WW-2/3) and Demand Letters issued by Union to Management (Ex.WW-2/4 to Ex.WW-2/7). Though neither any witness from Union was examined by the workmen nor any resolution of Union was placed on record, but it was held by the

Hon'ble High Court of Delhi that it was evident from the aforesaid documents that the workmen had authorized the Union to take up the cause and in pursuance of said authorization, the Union had issued demand letters and filed Statement of Claim before the Conciliation Officer and the Union had espoused the cause of the workmen.

19. An industrial dispute can be validly espoused by a trade union if the union is a representative body and the workman is a member thereof and the union has passed resolution with respect to dispute of the workman. In the present case, the workman/WW-1 has duly proved the resolution of the espousal meeting of Municipal Employees' Union dated 23.12.2023 i.e. **Ex.WW-1/1** and the Statement of Claim filed before the Conciliation Officer by the Union i.e. **Ex.WW-1/2**. Thus, in the present case, the Municipal Employees' Union, vide resolution **Ex.WW-1/1**, had resolved to espouse the cause of the present workman. On the basis of said resolution, the Union has filed the claim petition **Ex.WW-1/2** before the Conciliation Officer. The workman himself has stated in his cross-examination that he is a member of the Municipal Employees'

Union and placed on record the resolution, **Ex.WW-1/1** concerning his grievance. The management has not produced any convincing evidence to dispute the espousal document i.e. Ex.WW-1/1. In view of the above, the management's claim that the workman is not a member of the Union and that the Union has not properly espoused the dispute, stands falsified. It is also pertinent to mention here that the Division Bench of Hon'ble High Court of Kerala has held in **Mangalam Publications (India) Pvt. Ltd. Vs. Saju George, 2021(1) LLN 373** that once a reference had been made at the instance of the union, it is not open for the management to contend at stage of proceedings before Tribunal that the cause of workman had not been espoused by the Union. In the present case also, the management had not raised any dispute regarding espousal at the time when matter was pending before the Conciliation Officer and therefore, now they cannot raise this issue. Therefore, Issue No.1 is decided in favour of the workman and against the management.

ISSUE NO.2

As per terms of reference.

20. The terms of reference have two parts – first part deals with the

demand of regularization and equal pay for equal work and the second part deals with payment of overtime wages. Let's take these parts one by one for analysis and findings.

Whether the act of management of not regularizing services of workman since the date of joining is legal or justifiable; and if not, the demand of worker for paying him the entire difference of salary on the principle of "equal pay for equal work" from his initial date of joining, with all consequential benefits thereof, is legal and justified; and if so, to what relief is he entitled and what directions are necessary in this respect?

21. The AR of workman has argued that the workman Harivansh Singh S/o Sh. Chandrika Prasad was appointed by management on 19.03.2008 as Chowkidar and he has been working continuously and performing duties of a permanent and ongoing nature, but he has been treated as daily-wager/leave-substitute Chowkidar by the management with the object to deny him his legitimate wages and status. He has further argued that the workman has been discharging the same duties from the date of his initial joining, as discharged by his regular counterparts and thus, he is entitled to the same service

conditions and salary on the principle of "equal pay for equal work". He has further argued that the workman is entitled to regularization of his service because the management has committed unfair labour practice as enumerated in Sec.2(ra) r.w. Item No.10 of Fifth Schedule of the I.D. Act as the management has employed the workman for performing permanent and perennial nature of work of Chowkidar and treated him and continued him as mere temporary workman for several years with the object of depriving him the status of permanent workman because regularizing his services would have mandated the management to pay him the salary in regular pay scale.

22. However, the AR of management, on the other hand, has argued that the workman being leave-substitute Chowkidar cannot claim regularization. He has further argued that the workman is not entitled to regularization of his service as neither the management has committed any unfair labour practice nor the long duration of his service confers any right of regularization in favour of the workman. He, while placing reliance upon case-law titled as **Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC 1**, has

contended that this Tribunal does not have power to grant regularization of contractual workmen on the ground of length of their service because such regularization would amount to creating an impermissible mode of public appointment bypassing constitutional requirements.

23. So far as the case-law of **Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC 1** is concerned, the Hon'ble Supreme Court has held therein that the contractual employees in public departments cannot seek regularization and confirmation of service on the ground of the length of their service, and that such regularization would amount to creating an impermissible mode of public appointment bypassing constitutional requirements. But the Hon'ble Supreme Court has held in **Sheo Narain Nagar Vs. The State of Uttar Pradesh, (2018) 13 SCC 432**, that the ratio of case of **Uma Devi (Supra)** has not been properly understood and has been wrongly applied by various State Governments. It has been further held as follows:

> *"Though this Court has emphasized that incumbents should be appointed on regular basis as per rules, but new devise of*

making appointment on contract basis has been adopted, employment is offered on daily wage basis, etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/authorities. We regretfully make the observation that Uma Devi (supra) has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article of 14, 16 read with Article 39(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara Vs. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life, they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destitute, there being no provision for pension, retiral benefits, etc."

24. Thus, it has been held by Hon'ble Supreme Court that whereas the true spirit of law of **Uma Devi's case** (supra) was to ensure that the

employment is obtained through fair means and not via back-door entry, the various State Governments and authorities are using it merely as a tool to prevent the regularization of incumbents' services. The Hon'ble Supreme Court has further distinguished the **case of Uma Devi (supra)** in case-law titled as **Dharam Singh Vs. State of U.P., 2025 SCC OnLine SC 1735**, by holding that the State's refusal to sanction posts for the work of a perennial nature is different from bypassing the constitutional scheme of public appointment. It was held that where the nature of work is perennial, and the State itself acknowledges the need for a regular workforce, an arbitrary refusal to sanction posts cannot be sustained. The relevant portion of **Dharam Singh's case (supra)** in this regard is as follows:

> *"It must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non-suit the appellants is misplaced. Unlike Umadevi (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction*

between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order."

25. The Hon'ble Supreme Court has held in **Jaggo Vs. Union of India, AIR 2025 SC 296** that the intention behind the **case of Uma Devi** was to prevent backdoor entries and illegal appointments and not to penalize employees who have rendered long years of service of State. The relevant portion of judgment of **Jaggo's Case (supra)** in this regard is as follows:

"It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged,

continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization.

x x x x x

While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no

> *vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades."*

26. It was further held in **Jaggo's case (supra)** that in case of continuous, long-term service, indispensable duties, and absence of any mala-fide or illegalities in their appointments, refusing regularization simply because their original appointment was contractual or temporary would be contrary to the principles of fairness and equity. It is further held in **Jaggo's case (supra)** that Government institutions are entrusted with upholding the principles of fairness and justice and thus they bear an even greater responsibility to avoid exploitative employment practices; but when public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

27. The conspectus of the aforesaid judgments is that the regular recruitment for sanctioned posts cannot be delayed to perpetuate temporary appointments by the Government Department. Using outsourcing as a shield to perpetuate the exploitation of long-serving workers is impermissible. A later policy to outsource functions cannot retrospectively validate earlier arbitrary refusals or extinguish accrued rights. Thus, the reliance of management on the judgment of **Uma Devi (supra)** to argue that this Tribunal does not have power to regularize the service of workman is misplaced in law.

28. It is also pertinent to mention here that it is no more res integra that the prohibition of **Uma Devi's case (supra)** is not applicable on industrial adjudication. In **Project Dir. Dept. of Rural Development Vs. Its Workmen, 2019(2) LLJ 594**, the Hon'ble Delhi High Court has held that in the case of **Uma Devi (supra)** some public employees working in Commercial Tax Departments of some districts of Karnataka had approached the Administrative Tribunal with a prayer to regularise them and the said decision pertains to service law matters and the rigours applicable for grant of

regularisation in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act because the basic tenets of service law are very different from those of labour law and, therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector.

29. Thus, it is now settled law that the prohibition laid down for regularisation in **Uma Devi (supra)** does not apply to industrial adjudication and that the Industrial Tribunal has the power to direct regularisation of services in cases where pursuant to unfair labour practises, employees have been made to render services for long periods of time on casual basis work that should ordinarily be done by regular employees. (Reliance is placed upon ***Maharashtra State Road Transport Corporation Vs. Casteribe Rajya Parivahan Karmchari Sanghatana, 2009(8) SCC 556; ONGC Limited Vs. Petroleum Coal Labour Union & Ors., AIR 2015 SC 2210; Project Dir. Dept. of Rural Development Vs. Its Workmen, 2019(2) LLJ 594***.)

30. During the arguments, the AR of management has also argued that the workman has given undertaking that he has been engaged as temporary employee and his claim for regularization would be invalid and therefore, now he cannot claim regularization. On perusal it is found that it is not undertaking of workman, rather the same is pre-drafted typed office order of the management. This tribunal does not find force in the argument of the AR of management because so called undertaking cannot have over-riding effect on the law of the land as it is not in consonance with the I.D. Act, 1947. Otherwise also, it is no more res integra that in standard form of employment contract, there is unequal bargaining power between the parties as the employer drafts the terms of contract in advance and the employee, who is in need of job, generally has no say in negotiating on the terms of contract. He feels compelled to accept the terms in order to secure or keep the job. The AR of management has further argued that the management has its own rules and regulations and Standing Operating Procedures by which the management is being governed and the workers are appointed as per the terms and conditions of the contract which clearly suggests that they will be treated as leave-substitute employees

alone and now they cannot claim regularization when they were aware of the fact that their appointment was merely temporary in nature. This tribunal does not find force in the arguments of the AR of management as rules and regulations of an entity cannot have overriding effect on the law of the land. They have to be in consonance with the I.D. Act.

31. The AR of management has further argued that the management has its own policy of regularization i.e. Phased Manner Regularization Policy and the management regularizes its daily-wage/muster-roll employees as per availability of the posts and funds and the said policy has been upheld by the Hon'ble Delhi High Court in various cases. But the management's reliance on the phased manner regularization policy is not, by itself, a valid ground to deny the workman's claim. A phased manner regularization policy provides a process for regularizing the eligible daily-wage or muster-roll workers, engaged on work of regular or continuing nature. It is generally adopted as a short-time measure, in circumstances where the number of sanctioned posts is limited, and a surplus employees have been appointed on daily-wage basis due

to unavoidable circumstances. The management must establish that the policy applies to the workman, identify the relevant eligibility criteria and consideration process, and explain how it has dealt with the workman's case in light of seniority, staffing requirements and available posts. MCD cannot deny or indefinitely defer consideration solely by citing the phased policy; it must show that the policy has been fairly applied to the workman's case. But the management in the present case has failed to show the same. If the workman has served for years on continuing work, the management cannot defeat the claim merely by invoking phased implementation without showing a fair and reasoned application of the policy. This policy cannot be misused as a tool to perpetually engage the workers on daily-wage or muster-roll basis, extract work from them which is associated with permanent posts at minimum wages, and then regularize their services in a phased manner.

32. It is pertinent to mention here that it is settled law that the Industrial Tribunals possess wide ranging powers, which include power to create new rights and liabilities, alter terms of employment, and impose new obligations on employers in the

interest of social justice and industrial peace. The larger bench of Hon'ble Supreme Court has held in **Bharat Bank Ltd., Delhi Vs. Employees of Bharat Bank Ltd., AIR 1950 SC 188**:

> *"In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined in administration of justice in accordance with laws. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."*

33. The larger bench of Hon'ble Supreme Court has held in **Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia Vs. State of Bombay, AIR 1962 SC 486** as follows:

> *"It is well settled that industrial adjudication under the provisions of the Industrial Disputes Act 14 of 1947 is given wide powers and jurisdiction to make appropriate awards in determining industrial disputes brought before it. An award made in an industrial adjudication*

> ***may impose new obligations on the employer in the interest of social justice and with a view to secure peace and harmony between the employer and his workmen and full co-operation between them, such an award may even alter the terms of employment if it is thought fit and necessary to do so. In deciding industrial disputes the jurisdiction of the tribunal is not confined to the administration of justice in accordance with the law of contract."***

34. This Tribunal, therefore, is not only empowered but also obligated to rectify such injustices by regularizing the services of the workmen who have been subject to unfair labour practices and prolonged casual employment for performing the permanent and perennial nature of work typically performed by regular employees.

35. Unfair labour practice, as defined under Sec.2(ra), means any practice specified in the 5th Schedule of the I.D. Act, including, inter alia, item no.10, which provides that to employ workmen as *badlis*, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workmen, amounts to an unfair labour practice. Now the

question arises as to onus is on whom to prove that the management is guilty of commission of unfair labour practice – whether onus is upon the workman or the management? In Chief Conservator of Forest Vs. Jagannath Maruti Kondhare, AIR 1996 SC 2898, it was contended by the counsel for management that burden was upon the workmen to establish that the object of continuing them for years was to deprive them of the status and privileges of permanent employees. But the Hon'ble Supreme Court held that the burden cannot be put on the workman to prove that the object of management in continuing him for years was to deprive him of the status and privileges of permanent employees. It is held that if it is established that he was continued as *badli*, casual or temporary for long period, the inference would be drawn that the same was done with the object to deprive him of the status and privileges of permanent employees. The relevant portion of the aforesaid case-law is as follows:

> *"According to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion,*

it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under Minimum Wages Act."

36. It is further held in case of **Chief Conservator of Forest (supra)** that if persons are kept in jobs on casual basis for years, the object to deprive them of the status and privileges of permanent employees manifests itself and no further scrutiny is required. Thus, as per the case-law of **Chief Conservator of Forest (supra)**, if it is established on record that the management has kept the workmen as *badlis*, casual or temporary employees for long years, then no further scrutiny is required and the inference can be drawn from the same that it was done with the object to deprive them of the status and privileges of permanent employees, meaning thereby that it will

amount to the inference that the management is guilty of commission of unfair labour practice.

37. Now moving on to the factual matrix of this case, it is admitted fact that the workman had joined into the employment of the management w.e.f. 19.03.2008, though the case of the management is that he was appointed as leave-substitute Chowkidar. The MW-1 has also deposed that the workman was appointed as Leave Substitute. But he has failed to tell the name of the employee who had gone on leave, against which the workman was employed and has been working since then. It is pertinent to mention here that MW-1 has admitted during his cross-examination that the management has not filed any record to show that any regular employee was on leave and the concerned workman was employed during his leave period. He has admitted that the workmen/chowkidars have been working for 16 hours per day on working day and for 40/64 hours on weekends. MW-1 has also admitted that the nature of work, working hours and responsibilities of the concerned workman are same and identical to those chowkidars who are treated as regular and paid their salary in the

regular pay scale. He has admitted that in MCD, the posts of Chowkidars are sanctioned posts and carries the regular pay scale alongwith attendant benefits. He has also admitted that the concerned workmen/Chowkidars have been paid only minimum wages whereas the regular chowkidars have been paid 2½ times more salary and other benefits. He has also admitted that the concerned workmen have not been given any earned leave, casual leave, sick leave, etc. He has further admitted that the job of chowkidar is continuing in the schools of MCD since 1958 and likely to continue in future. Though he has admitted that the service records of workmen are with the management under its control and possession, but he deposed that he cannot tell if the workmen have not worked continuously and uninterruptedly from the initial date of their joining service with management.

38. Thus, from the testimony of the management's witness MW-1, it is clear that the concerned workman has joined the employment of the management on 19.03.2008 and has been working continuously and uninterruptedly since then, but till date he has been paid only minimum wages whereas his regular counterparts have been paid

salary in the regular pay scale which is 2½ times more than their salary. The management has neither presented any documentation to indicate that the workman's performance or conduct was unsatisfactory nor even made any averment in this regard. It is indisputable that the role of a Chowkidar is of a permanent and perennial nature, especially when there are already regular and permanent Chowkidars employed by the management. The MW-1 has also categorically deposed that the job of chowkidar is continuing in the schools of MCD since 1958 and is likely to continue in future. He has also admitted that the posts of chowkidars in MCD are sanctioned posts. However, no plausible explanation and evidence has come forth why the case of the workman has not been considered positively by the management.

39. Though in the present case, the MW-1 has admitted that the posts of chowkidars in MCD are sanctioned post, but the AR of management has argued that the workwoman cannot claim regularisation in the absence of sanctioned posts. But this plea of absence of sanctioned posts is not in consonance with the settled law that it is the obligation of the State to create posts for work of a permanent

nature, and the State cannot absolve its liability on account of financial constraints. The absence of a sanctioned post is not a bar to the claim of the workwoman, inasmuch as the work performed by workman is of a permanent nature. In the case titled as **Dharam Singh Vs. State of U.P., 2025 SCC OnLine SC 1735**, there were also no sanctioned posts, but the Hon'ble Supreme Court ordered for creating posts by holding that the duties were perennial in nature and extracting work from daily-wager for want of sanctioned post was not sustainable. In **Dharam Singh's case (supra)**, the U.P. Higher Education Services Commission had engaged the workmen for doing duties of peon/driver on daily wage basis between 1989 and 1992. On 24.10.1991, the Commission resolved to create 14 posts in Class-III and Class-IV and sought sanction from the State Government. But vide letter dated 11.11.1999, the State rejected the proposal citing financial constraints. Aggrieved by the said order, the workmen challenged the same by filing Writ Petition before the Hon'ble High Court praying therein for quashing of said order and directing the State to create 14 posts as proposed by Commission and then regularize them against those posts with regular pay. But their Writ Petition was dismissed by observing that they were

daily wagers and there was no rule for regularization in the Commission and that no vacancy was existing for considering them. Thereafter, they approached the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the non-speaking rejection on a generic plea of 'financial constraints', ignoring functional necessity and the employer's own long-standing reliance on daily wagers to discharge regular duties, does not meet the standard of reasonableness expected of a model public institution. Keeping in view the long and undisputed service of the workmen and admitted perennial nature of their duties, the Hon'ble Supreme Court directed the state to create supernumerary posts for regularization of the workmen.

40. It is apparent from the reading of the aforesaid judgments that where the initial appointment was not tainted by fraud or illegality, regularization should not be denied to the workman who has rendered continuous service in a perennial nature of work integral to the functioning of an institution, whose duties are identical to those of regular employees, and who has no adverse service record. In view of undisputed position and the material on record, this

tribunal holds that management has clearly committed unfair labour practice as stipulated in Item No.10 of Fifth Schedule r.w. Sec.2(ra) of I.D. Act by employing the workman as leave substitute/daily wager Chowkidar for performing the permanent nature of work of *Chowkidar* and continued him for years with the object of depriving him status and privileges of a regular and permanent employee. I am fortified on this point by case-law of **Chief Conservator of Forest (supra)** wherein the Hon'ble Supreme Court has held that employing workers on temporary basis for long periods and denying them status and salary of a regular employee amounts to unfair labour practice as giving them the status and privileges of permanent employee would require the management to pay the workman higher than the one fixed under the Minimum Wages Act. In these circumstances, this Tribunal holds that the workman is entitled to regularization in service on the post of Chowkidar.

41. As far as the question of equal pay for equal work is concerned, it has been consistently stated in Statement of Claim and Affidavit of Evidence of WW-1 that the workman has been discharging the same duties, as being discharged by the regular and permanent counter-

parts working on the post of Chowkidar. Even though the management had denied the same in its Written Statement, but its witness i.e. MW-1 has admitted in his cross-examination that the nature of work and responsibilities of the workman have been same and identical to those Chowkidars who are treated as regular and permanent and paid salary in the regular pay scale, whereas the workman was paid only minimum wages. Hence, it is duly established on record that the workman was indeed discharging the similar duties and responsibilities of Chowkidars, who were treated as regular and permanent by the management, yet, he was paid merely minimum wages, whereas his regular counterparts were paid their salary in regular pay scale. The Hon'ble Supreme Court in cases titled as **Dhirendra Chamoli & Ors. Vs. State of U.P., (1986)1 SCC 637** and **State of Punjab & Ors. Vs. Jagjit Singh & Ors., AIR 2016 SC 5176** has observed that so long as workmen are performing the same duties as their regular counterparts, they are entitled to the same salary and service conditions as that of regular employees. Hence, in view of the same, this tribunal holds that the workman is also entitled to the difference of salary on the principle of equal pay for equal work from his initial date of joining for discharging the

same duties with similar roles and responsibilities as that of a regular and permanent Chowkidar.

42. Accordingly, this issue is decided in favour of the workwoman and against the management.

Whether non-payment of overtime wages for overtime services rendered by the workmen till now at the rate of double of the wages from their initial date of joining is legal and justified? If no, to what relief the workmen are entitled to and what directions are necessary in this respect?

43. So far as the point of over-time wages is concerned, the case of the workman is that he has been working for 15/19 hours on working days and for 40 to 64 hours on weekends and continuously round the clock in summer & winter vacations and festival holidays, but he has never been paid any overtime wages. The management's witness i.e. MW-1 has admitted the same as correct. The relevant portion of his testimony in this regard is as follows:

> "*The schools which function in single shift i.e. from 08.00 am to 01.00 pm, these chowkidars come for duty at 04.00 PM and perform till 08.00 AM in the next morning. It is correct that the*

single shift school are closed on Sundays, in that situation, the concerned workmen perform their duties starting from 04.00 PM of Saturday to 08.00 AM following Monday. It is further correct that Second Saturday, the schools are closed and in that case, these workmen perform their duties from 04.00 PM of Friday to 08.00 AM following Monday. It is also correct that on gazetted holidays as well as on National holidays, the workmen perform round the clock duties till the opening of the school. It is also correct that during summer vacation as well as winter vacation and vacations of festivals, these workmen perform round the clock duties from the closing of school till the opening of school.

It is correct that where the MCD schools are working in two shifts, the concerned workmen are performing their duties from 08.00 PM to 08.00 AM next morning. It is also correct that as far as the other holidays are concerned, these Chowkidars also work round the clock from closing of the school till the opening of the school.

MCD schools function for about 222 days in a year and on remaining 143 days the schools remain closed. It is also correct that during 143 days, these workmen perform round the clock duties."

44. The AR of workman has argued, while placing reliance upon Sec.8 of Delhi Shops and Establishment Act and case-laws titled as *Y.A. Mamarde Vs. Authority under Minimum Wages Act, (1972) 2 SCC 108; G4S Secure Solutions (I) (P) Ltd. Vs. Suraj Kumar Saw, 2026 SCC OnLine Del 7048; and Gujarat Mazdoor Sabha Vs. State of Gujarat, (2020) 10 SCC 459* that the workman is entitled to over-time wages at the rate double of the wages from his initial date of joining. In the aforesaid authorities, it has been held that the principle of paying for over-time work at double the rate of wage is a bulwark against the severe inequity that may otherwise pervade relationship between workers and management. Besides, there may be extra strain on the health of the worker for doing overtime work and double rate of wages enables worker to maintain proper standard of health and stamina. Since, it has been admitted by MW-1 that the workman has been doing enormous overtime beyond the applicable ordinary working hours i.e. 8 hours per day, so, this Tribunal is of considered opinion that he is entitled to over-time wages at the rate double of the wages. Hence, this issue is also decided in favour of the workman and against the management.

Relief:

45. This tribunal has power to grant relief from the retrospective date in view of the peculiar facts and circumstances of this case. Reliance is placed upon the judgement of Hon'ble Supreme Court in **Sarva Shramik Sangh Vs. Indian Hume Pipe Co. Ltd., (1993) 2 SCC 386** wherein it is held that that Industrial Tribunals/Labour Courts have power to award relief w.e.f. a date anterior to the date of raising the dispute. The same view has been taken by the Hon'ble Delhi High Court in **Delhi Administration Vs. Yogender Singh, 1996 SCC OnLine Del 849** by observing that the Industrial Tribunal is well versed with the power to grant relief from a date anterior to the date on which the dispute is raised. The relevant portion of the judgment is reproduced below:

> *"43. Besides the factual position distinguishing the case in hand from the cases cited above, it needs also to be kept in view that the Industrial Tribunal is not bound by the rigid rules of law. The process which an Industrial Tribunal employs in coming to a decision is not a judicial process. It may confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing*

> *document. It may even create new rights and obligations which it may consider essential for keeping industrial peace. (See Bharat Bank, Ltd. 1950 LLJ 921. It is for this reason that it is said that the Award of the Tribunal may contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations. [See Western Indian Automobile Association Vs. Industrial Tribunal, 1949 LLJ 245.] It may also be remembered that if found to be warranted by the facts and circumstances of the case, the Industrial Tribunal may even grant relief from a date anterior to the date on which the dispute is raised [See: Sarva Shramik Sangh v. Indian Hume Pipe Co. Ltd., (1993)2 SCC 386.] This, then, is the power of the Industrial Tribunal."*

46. The management has not led any cogent evidence that the workman should not be granted relief of regularization from his initial date of joining.

47. In view of the aforesaid discussion and analysis, this Tribunal holds that the workman Harivansh Singh is entitled to regularization in service on the post of Chowkidar w.e.f. from his initial date of joining i.e. 19.03.2008 in the regular pay scale on the principle of

'equal pay for equal work' from his initial date of joining onwards, with all consequential benefits. On the aspect of over-time wages, the management is directed to pay the workman over-time wages @ of double of wages of regular Chowkidar, for the over-time services rendered by him till now. The management is directed to implement the Award within 60 days of its publication, failing which, the management shall be liable to pay interest @ 8% per annum from the date of terms of reference i.e. 23.10.2024 to till its realization. The Award is passed accordingly.

48. Copy of Award be sent to the appropriate Government for publication. File be consigned to Record Room.

(Announced in open Tribunal on 29.09.2026)

NAVITA KUMARI BAGHA

Digitally signed by NAVITA KUMARI BAGHA
Date: 2026.09.29 18:38:17 +0530

(Navita Kumari Bagha)
Presiding Officer Industrial Tribunal-01
Rouse Avenue District Court, New Delhi