

(2025) 05 DEL CK 0957

In the Delhi High Court

Case No : Writ Petition (C) No. 1818 Of 2019

Shubhash Chandra & Ors

APPELLANT

Vs

Commissioner, East Delhi Municipal Corporation & Ors

RESPONDENT

Date of Decision : 28-05-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 05 DEL CK 0957

Hon'ble Judges : C. Hari Shankar, J; Amit Sharma, J

Bench : Division Bench

Advocate : Mukesh Gupta, Harshit Gupta, Abhishek Singh, Kumar Rajesh Singh, Punam Singh

Final Decision : Allowed

Judgement

C. Hari Shankar, J.

1. The petitioners are seven in number. They have approached this Court under Article 226 of the Constitution of India, being aggrieved by the dismissal, by the Central Administrative Tribunal "the Tribunal", of OA 3879/2016, filed by them. They were initially appointed as "leave substitute" Chowkidars in the Municipal Corporation of Delhi "MCD". Subsequently, they were appointed as Daily Wagers, against sanctioned posts. They seek regularization. Their claim, before the Tribunal, was predicated on the fact that other Chowkidars, who had also been initially appointed as leave substitutes and had been taken on daily wages on the same day as them, were being regularized. The Tribunal having dismissed their OA, the petitioners are before us.

2. The dates of engagement as leave substitutes, and subsequently as daily wage Chowkidars, of the petitioners, may be presented, in a tabular fashion, thus:

S.No.

Name

Date of appointment as leave substitute

Date of appointment as daily wager

1

Subhash Chandra

25 March 1999

7 March 2007

2

Pravin Kumar

11 December 1999

7 March 2007

3

Udham Singh

15 November 1999

7 March 2007

4

Shaukender Kumar

8 April 1999

7 March 2007

5

Arun Kumar

1 July 2001

7 March 2007

6

Rajeev

6 October 2000

7 March 2007

7

Ravindra

11 August 2001

7 March 2007

3. There is no dispute about the fact that the appointment of the petitioners as daily wage Chowkidars was against vacant sanctioned posts.

4. Thus, each of the petitioners has, for over 18 years as on date, served the MCD as daily wage chowkidars, and are yet to be regularized.

5. With the development of the law, the main fulcrum of the dispute between the parties does not really survive for consideration. It may, however, be briefly noticed. The MCD, vide Resolution 709 dated 20 November 1978, decided to regularize daily wage employees working with them in a phased manner.

6. On 14 May 2008, a meeting was convened under the Chairmanship of the Commissioner, MCD, to discuss, inter alia, the issue of regularization of daily wagers. In the said meeting, it was resolved that daily wagers engaged between 1 April 2000 and 31 March 2003 would be regularized.

7. Following this, the East Delhi Municipal Corporation "the EDMC", to whom the petitioners had been assigned following trifurcation of the MCD into the East, North and South Delhi Municipal Corporations in 13 January 2012, vide Resolution No. 150 dated 13 October 2014, expressed its intention to regularize 71 daily wage Chowkidars in the Education Department, who were initially appointed as leave substitute Chowkidars and were placed on daily wages in 2007-2008 against sanctioned posts. The petitioners would fall within this list of 71 daily wage Chowkidars.

8. This was, however, followed by MCD Resolution No. 110 dated 19 October 2015, which noted the fact that, following the MCD Resolution No. 150 supra, all Chowkidars taken on daily wages till 31 March 2003 had been regularized. However, following "some legal issues", it was resolved that, as the Chowkidars engaged on daily wages till 31 March 2003 had been initially appointed as leave substitute Chowkidars on or before 31 March 1998, only Chowkidars appointed as leave substitutes on or before 31 March 1998 were entitled to regularization as, otherwise, it would result in disparity. By a subsequent Modification dated 14 September 2009, the cutoff date for appointment on daily wages was changed from 31 March 2003 to 10 April 2006.

9. The respondents' contention is that the petitioners were converted from leave substitutes to daily wage Chowkidars after 10 April 2006 and that they, therefore, do not make the cutoff date for regularization.

10. The Tribunal, too, in the impugned order, has dismissed the petitioner's OA on the sole ground that no one who had been engaged after them as leave substitutes or converted to daily wages after they have been regularized.

11. While issuing notice in the present writ petition on 22 February 2019, the respondents were directed to explain, in their counter-affidavit, why appointments on regular basis were not being made, when vacancies were

available and persons like the petitioners were continuing on daily wages.

12. The respondents' response, already noted hereinabove and recorded in the subsequent order dated 29 November 2022, was as under:

"As per directions of the Hon'ble High Court, it is submitted that the petitioner were engaged as leave substitute after 31.03.1998.

No leave substitute engaged after 31.03.1998 has been regularized. In this regard, a resolution has been passed by erstwhile EDMC vide No. 110 dated 19.10.2015 regarding policy for regularization for person who were engaged as leave substitute on or before 31.03.1998.

All the petitioners of this case were engaged as leave substitute after 31.03.1998 and therefore they have not been regularized.

When the turn of regularization of their batch mates will come they will also be considered along with their counter parts as per phase manner policy of regularization of MCD."

13. Things continued thus till 23 July 2024, on which date the following order was passed by this Court:

1. Pursuant to order dated 31.08.2022, learned counsel for the respondents had placed before this Court a communication received by him by the Assistant Director, Education wherein it is noted that the petitioners were engaged as leave substitutes after 31.03.1998 and no leave substitute has been engaged thereafter. Further noted EDMC vide No. 110 dated 19.10.2015 has passed a resolution in respect of policy for regularisation of persons who were engaged leaves substituted on or before 31.03.1998 and since all the petitioners herein were engaged against the leave substitutes after 31.03.1998, therefore, they have not been regularised. Also that when the turn of regularisation of their batch mates will come, they will also be considered alongwith their counter parts as per policy of regularisation of MCD.

2. This Court finds that the it has nowhere been mentioned in the said communication as to when the vacancies are going to arise and when the petitioners can seek their regularisation.

3. To this effect, the respondents are directed to file an affidavit under the signatures of Director of Education within 04 weeks from today to apprise this Court as to when or in which year, the vacancies shall be notified and the petitioners will be regularised. The advance copy of the affidavit be furnished to the opposing counsel, failing which the same shall be taken on record subject to cost of Rs.15,000/- in favour of the petitioners.

4. Re-notify on 25.10.2024."

14. In response, the respondents have filed an affidavit dated 20 August 2024, in which they have submitted as under:

"3. That in pursuance of the judgment of Hon'ble Supreme Court of India in the matter of Secretary State of Karnataka v Uma Devi (2006) 4 SCC 1 dated 10.04.2006; the respondent convened a meeting on 14.05.2008 vide which the cut-off date of regularisation of daily wagger employees was fixed as 31.03.2003 and later modified as 10.04.2006 vide modification letter No. RPA-VII/CED(C-I)/2009/RK/31 dated 14.09.2009. Copy of the minutes of the meeting held on 14.05.2008 issued vide No. RPAVIII/CED (C-I) /2008/R.K/15 dated 09.06.2008 and modification circular dated 14.09.2009 are annexed as Annexure-II & III respectively.

Daily wagger employees engaged against vacant sanctioned posts are being regularised as per phase manner policy of regularisation of MCD in compliance of Resolution No. 273 dated 27.06.1988, circulars dated 09.06.2008 & 14.09.2009. The law regarding the regularisation of Contractual and Daily Wager employees stands further clarified in the following judgements:

a) Civil Appeal No. 5689-5690/2021-UOI & Ors. v Ilmo Devi & Anr (2021) 20 SCC 290,

b) Oil and Natural Gas Corporation v Krishna Gopal 2020 SCC OnLine 150,

c) Dr. Ashwani Kumar v UOI. (2020) 13/SCC/585

4. That Daily wagger employees engaged on vacant sanctioned posts upto 10.04.2006 in Education Department of MCD have been regularised and matter is in process in respect of remaining employees.

5. That the applicants (Shubhash Chandra &Ors.) are working against the notified vacant sanctioned posts w.e.f. 07.03.2007.

6. That these applicants alongwith 288 employees out of 353 employees were engaged as daily wagers against vacant sanctioned posts w.e.f. 07.03.2007 as per available vacant sanctioned posts at that time.

8. That with regard to the matter of regularisation of applicants, it is humbly submitted that their regularisation cannot be considered on the ground that they were engaged as daily wages Chowkidar on vacant sanctioned posts alongwith 288 employees on 07.03.2007 only after the cut-off date of 10.04.2005 as per circulars dated 09.06.2008 & 14.09.2009 issued by the respondent in pursuance of the judgement of Hon'ble Supreme Court Of India in the matter of Secretary State of Karnataka v Uma Devi."

15. Clearly, therefore, there is no light presently at the end of the tunnel for the petitioners. For over a decade, nothing has moved, and it is clear that the statement, in para 4 of the affidavit dated 20 August 2024, that the "matter is in process in respect of the remaining employees" is nothing more than idlespeak.

16. The Tribunal, quite obviously, has not considered the matter in all its

seriousness. The fact that there was in place a policy to regularize leave substitute Chowkidars who were subsequently taken on daily wages, and that the petitioners would be included in the 71 officers covered by Resolution No. 150 dated 13 October 2014, has not been noticed at all. It can hardly be an answer to the petitioners' claims for regularization that no one engaged after them had been regularized.

17. The position in law has now changed radically with the judgment of the Supreme Court in *Jaggo v UOI* 2024 SCC OnLine SC 3826 and *Shripal v Nagar Nigam, Ghaziabad* 2025 SCC OnLine SC 221. In its comparatively recent decision in *Deen Bandhu Garg v SDMC* 2025 SCC OnLine Del 2417, this Court has attempted to trace the trajectory of evolution of the law relating to regularization of casual employees, daily wagers, contract employees and the like, and has, after referring to the judgments in *State of Karnataka v Uma Devi* (supra), *Registrar General of India v V. Thippa Setty* (1998) 8 SCC 690, *UOI v Sheela Rani* (2007) 15 SCC 230, *Official Liquidator v Dayanand* (2008) 10 SCC 1, *State of Rajasthan v Daya Lal* (2011) 2 SCC 429, *Secretary to Govt School Education Department v R. Govindaswamy* (2014) 14 SCC 769, *University of Delhi v Delhi University Contract Employees Union* (2021) 16 SCC 71, *UOI v Ilmo Devi* (supra) and *Malook Singh v State of Punjab* (2022) 17 SCC 761, culled out the following principles:

(i) Long and uninterrupted service, rendered for 10 years or more, could not be brushed aside by levelling the initial employments as part time or contractual. Importantly, the Supreme Court held that the "essence of their employment" had to be "considered in the light of their sustained contribution, the integral nature of their work and the fact that no evidence suggests their entry was through any illegal or surreptitious route". This passage denotes an important development in the law, by which the Supreme Court has effectively lifted the veil of the nomenclature conferred to the appointment of the employees. The Supreme Court had held that it is not the nomenclature of the appointment which is of relevance, but the nature of the service rendered by the employees. The nature of the service by the employees would in turn determine the actual nature of their employment. The Supreme Court has identified, for this purpose, the relevant considerations as being (a) the sustained contribution of the employees, (b) the integral nature of their work and (c) whether any evidence exists to indicate that their entry was through any illegal or surreptitious route.

(ii) Where the employees had been engaged in performing essential duties, indispensable for the day to day functioning of the office, on a daily and continuous basis over an extended period, the responsibilities undertaken by the employees had to be treated as akin to those typically associated with sanctioned posts.

(iii) In such circumstances, it could not be sought to be contended by the establishment that the posts held by the employees on ad hoc/part time/casual basis were not regular posts, as the nature of work rendered by the employees

was perennial and fundamental to the functioning of the offices. Significantly, the Supreme Court holds that "the recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled".

(iv) Subsequent outsourcing of the same tasks to private agencies fortified the conclusion that the services rendered by the employees were inherently needed by the establishment, and that the work undertaken by them was neither temporary nor occasional.

(v) Consistent satisfactory performance, by the employees, over a long period of time, further solidified their claim for regularization.

(vi) Where the job rendered by the employees was menial in nature, such as cleaning, sweeping, dusting and gardening, the establishment could not seek to contend that the employees did not possess the necessary educational qualifications for the post. The educational criteria were never central to the engagement by the employees or to the performance, by them, of their duties. Insisting on formal educational requirements would amount, in such circumstances, to "an unreasonable hurdle".

(vii) Where, in such circumstances, the employees' roles were essential and indistinguishable from the roles of other regular employees, the employees had rendered sustained service over extended period and there was no adverse report regarding their performance, equitable treatment and regularization of the services of the employees was warranted. Denial of such regularization amounted to manifest injustice, and required rectification.

(viii) The decision in Uma Devi did not intend to penalize employees who had rendered long years of service, fulfilling ongoing and necessary functions of the establishment. It was intended to prevent back door entries and illegal appointments, which circumvented constitutional requirements.

(ix) Where the appointments were not illegal, but possibly "irregular" and where the employees had rendered sanctioned functions continuously over a long period, the need for a fair and humane resolution became paramount. Thus, held the Supreme Court, "prolonged, continuous and unblemished service performing tasks inherently required on a regular basis (could), over the time, transform what was initially ad hoc or temporary into a scenario demanding fair regularization".

(x) Where the initial appointment of the employee was termed "temporary", but the employee had performed the same duties as performed by regular employees over a considerable period, procedural formalities could not be used to deny regularization by service.

(xi) The Court was required to look beyond the surface label of the work being undertaken by the employee and to consider the realities of employment, which included continuous, long term service, indispensable duties and absence of any

mala fides or any illegalities in their appointments. Refusing regularization to such employees, merely because the original terms of their employment did not explicitly provide for regularization, or because an outsourcing policy had been belatedly introduced, would be contrary to principles of fairness and equity.

(xii) Among the ways in which such temporary employees were exploited were

(a) misuse of "temporary" labels,

(b) arbitrary termination,

(c) lack of career progression,

(d) using outsourcing as a shield, and

(e) denial of basic rights and benefits.

(xiii) Uma Devi was intended to curtail the practice of back door employments and ensure that appointments adhere to constitutional principles. It was regrettable that Uma Devi was being interpreted and misapplied to deny legitimate claims of long serving employees. The judgment distinguished between "illegal" and "irregular" appointments. It provided for regularisation, as a one-time measure, of employees who were engaged in duly sanctioned posts, and had served continuously for more than 10 years, but whose initial appointment was "irregular", in that it lacked adherence to procedural formalities.

18. Applying these principles to the facts of the present case, we find that the entitlement of the petitioners to regularization cannot be disputed, and the respondents themselves were considering them for regularization. They had been appointed against sanctioned posts, and vacancies are available. They have continued, from the time of their appointment as leave substitutes, for 25 to 27 years, and even after their conversion to daily wage employees, for over 18 years as on date. There is no complaint about their work. Their job is perennial, as they are working as Chowkidars, and the very fact of their having served the MCD for so long is a testimony to their continuous requirement. The additional affidavit filed by the respondents pursuant to the order dated 23 July 2024 itself states that their case for regularization was in process. That process appears, however, to have reached a stalemate as, for ten years now, the status quo continues.

19. Inasmuch as the petitioners' entitlement to regularization is undisputed, the Court, applying the law laid down in Jaggo, holds the petitioners to be entitled to be regularized on the posts occupied by them.

Conclusion

20. Resultantly, the impugned order dated 1 October 2018 of the Tribunal is quashed and set aside. The petitioners are held to be entitled to regularization on the posts presently occupied by them. They would be entitled to all consequential benefits.

21. The respondents are, therefore, directed to issue formal orders regularizing the petitioners in the posts held by them.
22. Compliance be ensured within a period of four weeks.
23. The writ petition stands allowed accordingly with no orders as to costs.