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**IN THE HIGH COURT OF ORISSA, CUTTACK**

**W.P.(C) No.12073 of 2017**

*(In the matter of an application under  
Articles 226 & 227 of the Constitution of India)*

Kailash Chandra Das ..... Petitioner

-Versus-

State of Odisha & others ..... Opposite Parties

**Advocate for the parties**

For Petitioner : Mr. Sameer Kumar Das,  
Advocate

For Opposite Party No.1 : Mr. D.K. Sahoo,  
Additional Govt. Advocate

For Opp. Party Nos.2 & 3 : Mr. S. Das,  
Advocate

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**CORAM: JUSTICE SANJAY KUMAR MISHRA**

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*Date of Hearing: 10.12.2025*

*Date of Judgment: 06.03.2026*  
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**S.K. Mishra, J.** This writ petition has been preferred assailing the decision of the Authority dated 23.11.2016 along with the Agenda dated 19.11.2016 under Annexure-7, vide which the Petitioner's claim for regularization of his service stood rejected. The Petitioner also seeks direction to the Opposite Parties to reinstate him in service and to



regularize him as a Clerk with effect from 06.08.2010 in parity with similarly placed DLR employees in terms of the Award of the Labour Court under Annexure-1, so also payment of back wages to the Petitioner within a stipulated period.

**2.** The brief facts leading to the filing of the writ petition are that, the Petitioner was engaged as a DLR Assistant (Clerk) in the Bhubaneswar Development Authority (BDA) on 03.08.1994 and continued to discharge his duties uninterruptedly to the satisfaction of the authorities. As several similarly placed DLR employees, including the Petitioner, had completed substantial years of service, the Employees' Association (BDA Workers' Association) raised an industrial dispute seeking regularization of their services. Conciliation being failed, the dispute/demand of the Union for regularization of service of 113 workmen was referred by the State Government to the Labour Court, Bhubaneswar for adjudication and registered as I.D. Case No.74 of 2003. Ultimately the Labour Court, Bhubaneswar passed an Award dated 30.12.2004, directing regularization of services of all the concerned workmen, including the Petitioner. Subsequently, the said Award attained finality after dismissal of W.P.(C) No. 5319 of 2005 on 11.01.2010 by this Court, so also SLP (Civil) No. 20736 of 2010 by the



Supreme Court on 06.08.2010, which were preferred by the BDA.

**2.1.** While awaiting regularization of his service in terms of the Award passed in I.D. Case No.74 of 2003, the Petitioner was relieved from Information Section of BDA on 05.01.2007. Pursuant to the same, though he gave his joining report before the Establishment Officer on 06.01.2007 for a suitable posting, he was not assigned any duty. But later on he was allowed to sign the attendance register. During continuance of service, a charge-sheet was issued to the Petitioner on 24.10.2008 for alleged unauthorized absence. An explanation was submitted on 31.10.2008 denying the allegations. An enquiry was allegedly conducted by the OSD (Legal) behind the back of the Petitioner. Without furnishing the Enquiry Report or affording opportunity of hearing, the Petitioner was disengaged from service on 20.11.2009, in violation of principles of natural justice.

**2.2.** Being aggrieved, the Petitioner preferred an Appeal on 11.03.2010 before the Chairman, BDA. The said Appeal being placed before the Authority of BDA, in the Authority Meeting dated 10.11.2010, it was resolved to re-engage the Petitioner with a warning. It was further resolved that his case for regularization would be considered like other DLR employees. However, no administrative order of posting was issued in compliance



with the said Resolution of the Authority. Consequently, after dismissal of SLP (Civil) No. 20736 of 2010 on 06.08.2010, services of all other similarly placed 112 employees named in the Award were regularized. However, the Petitioner's case remained pending due to delay in acting in terms of the proceeding meeting dated 10.11.2010.

**2.3.** Subsequently, in its 133rd Meeting dated 23.11.2016, the Authority rejected the Petitioner's claim for regularization by relying on Finance Department Resolution dated 15.05.1997 under Agenda Item No. 30/133. Hence, the present writ petition has been preferred by the Petitioner seeking judicial intervention for re-engagement and regularization of his service with consequential benefits.

**3.** Such a prayer has been made basically on the ground that the Resolution of Finance Department dated 15.05.1997, relying on which the case of the Petitioner was not considered for regularization, is inapplicable, as the Petitioner had completed more than ten years of continuous service well before the Labour Court Award, having been working with effect from 03.08.1994.

**3.1.** It is the case of the Petitioner that, once the Appeal of the Petitioner was considered and a decision was taken for his re-engagement by the Authority in its Meeting dated 10.11.2010, the question of any break in



service does not arise. Further, unlike others, who have been regularized with effect from 06.08.2010, the Petitioner ought to have been regularized from the said date without any discrimination. Hence, the rejection of his case is quite unreasonable, illegal, arbitrary and an outcome of non-application of mind by the B.D.A.

**4.** A Counter Affidavit has been filed by the Opposite Parties No.2 & 3 opposing to the prayer made in the writ petition stating therein that, the Petitioner was engaged as a DLR Assistant (Clerk) on 03.08.1994 and worked in different branches of BDA till 05.01.2007. Thereafter, he remained absent from duty without intimation and worked only for four days during the year 2007. On account of unauthorized absence and negligence in duty, a proceeding was initiated against him. After inquiry and opportunity of hearing, the Petitioner was disengaged from service vide order dated 20.11.2009.

**4.1.** It is the further stand of the Opposite Parties that, although the Petitioner preferred an Appeal against the said disengagement order and the Authority in its Meeting dated 10.11.2010 resolved to re-engage him with a warning and to consider his case for regularization after observing formalities, upon careful examination of his previous service records, it was found that he had not rendered continuous service as per the prevailing Rules. Consequently, the matter was placed before the Authority



in its 133rd Meeting dated 23.11.2016, in which it was decided not to regularize the Petitioner's service in view of the Finance Department Resolution dated 15.05.1997.

**5.** In response to the Counter Affidavit filed by the Opposite parties Nos. 2 & 3, a Rejoinder Affidavit has been filed by the Petitioner denying the allegations made therein. It has been asserted that, despite the Award of the Labour Court having attained finality, the Petitioner was disengaged on 20.11.2009 during pendency of the proceeding before this Court on a false plea of unauthorized absence, which was later recalled and he was directed to be reinstated in service.

**5.1.** It has further been stated that the Authority, in its Meeting dated 10.11.2010, directed to reinstate the Petitioner and to grant him all consequential benefits and to consider his case for regularization in terms of the Labour Court Award. However, despite similarly situated employees having been regularized, unfortunately, in the meeting dated 23.11.2016, after about six years of taking a decision to re-engage him and to consider his case for regularization like other DLR employees, the Petitioner alone was denied absorption even as a contractual DLR employee, which is in clear violation of the order of the Supreme Court so also an act of contempt.

**5.2.** The Petitioner has categorically denied the allegations of unauthorized absence or negligence in duty.



It has been asserted that the Petitioner was discharging his duties diligently in accordance with official orders and that the contrary stand taken in the Counter Affidavit is unacceptable in law, particularly in view of the appellate order passed by the Chairman, BDA, and the consequential decision under Annexure-6. It has further been stated that though a legal opinion was sought for and as per the said opinion in favour of the Petitioner treating the relevant period as continuous service and for its regularization was not acted upon on the ground that the matter is subjudice.

**6.** Learned Counsel for the Petitioner submitted that the Vice Chairman, B.D.A. had no authority to act contrary to the decision of the B.D.A. dated 10.11.2010 directing reinstatement/re-engagement of the Petitioner. Since the Petitioner was continuing as a DLR employee and the Award stood in his favour, the order passed under Annexure-7 series is per se illegal, without jurisdiction, mala fide, and a nullity in the eye of law.

**6.1.** Learned Counsel for the Petitioner further submitted that the Labour Court Award dated 30.12.2004, having been affirmed by this Court so also the Supreme Court, could not be nullified by the subsequent disengagement order dated 20.11.2009, which was passed without authority, without following due process of law, and in violation of the principles of natural justice. Upon



confirmation of the Award, the Petitioner is deemed to be a regular employee w.e.f. from 03.08.1999, i.e., the date of completion of five years of service, as directed by the Labour Court.

**6.2.** It was also submitted that the stand of the Opposite Parties treating reinstatement as a fresh engagement and denying regularization on the ground of non-completion of ten years of service is completely absurd and unacceptable in law, particularly when similarly situated 112 DLR employees have already been regularized in terms of the Award passed in I.D. Case No.74 of 2003. Accordingly, non-implementation of the Award regarding regularization of service as well as the decision dated 10.11.2010 taken in the Authority Meeting to re-engage the Petitioner is unsustainable. It was submitted that the Petitioner is entitled to be reinstated in service w.e.f.20.11.2009,i.e., the date from which he was illegally disengaged ,so also regularization of his service with effect from 03.08.1999 as a Clerk, as was done in case of similarly placed persons named in the Award passed by the Labour Court, with all consequential benefits.

**7.** Per contra, Learned Counsel for the Opposite Party Nos.2 & 3, reiterating the stand taken in the Counter Affidavit, submitted that, as the Petitioner remained unauthorisedly absent on several occasions and



committed negligence in duty, a departmental proceeding was rightly initiated against him leading to his disengagement on 20.11.2009 after following due procedure. Further, although the B.D.A. Authority, as a matter of leniency, resolved on 10.11.2010 to re-engage the Petitioner with a warning, such regularization can only be granted upon satisfying eligibility conditions under the prevailing policy. However, the Petitioner's case, upon objective scrutiny by the Authority in its 133rd Meeting dated 23.11.2016, was rightly rejected on the ground of non-fulfillment of the criteria of continuous service. Hence, no discrimination or arbitrariness can be alleged and the writ petition be dismissed.

**8.** On perusal of records it is ascertained that, pursuant to the order dated 02.08.2024 of this Court, vide which a direction was given to produce the work sheet/attendance sheet of the Petitioner, the Opposite Party Nos. 2 & 3 have filed an Affidavit enclosing thereto salary statement of the Petitioner for the period from 1994 to 2006 as Annexure-A/2. It has been asserted therein that the Petitioner remained unauthorisedly absent which warranted for his disengagement. He was disengaged while he was working in the Enforcement Section w.e.f 5.1.2007. As he remained unauthorisedly absent from duty, his engagement was treated discontinued after 05.01.2007. The Petitioner was asked to furnish explanation vide letter



No.2289 dtd. 09.03.2007 and Memo No.8687 dtd.24.10.2008. After due enquiry, the Enquiring Officer found that the charges were established and basing on that the order of disengagement was issued vide Memo No. 13289 dtd.20.11.2009. It has further been asserted that, though the Petitioner was initially directed to be re-engaged by the Vice Chairman, the Board, in its 133rd Meeting on 23.11.2016, declined regularization of his service in view of the Finance Department Resolution dated 15.05.1997, noting that the Petitioner did not fulfill the prescribed norms.

**8.1.** In response, the Petitioner, through a Rejoinder Affidavit to the said Further Affidavit, has denied the allegations of unauthorized absence, clarifying therein that NMR/DLR employees are entitled to salary only for actual working days. In an ideal condition, from 365 days of a year, there are 12 second Saturdays, 52 Sundays and 39 to 42 days of government holidays. Thereby hardly there are about 260 working days available for an employee to work in a year. Further, it has been stated that it is strange to note that the Petitioner has been disengaged twice, first on 05.01.2007 and secondly on 20.11.2009. It has been stated that the Vice Chairman's finding requiring ten years of continuous service for regularization is unsustainable being inconsistent with the Award, pursuant to which 112 similarly situated employees were



regularized, excluding the Petitioner on the ground of the illegal disengagement order, which was ultimately held to be bad by the Authority.

**9.** In view of the facts on record and submissions made by the learned Counsel for the parties, the following points emerge to be dealt/answered in the present writ petition;

- I) *Whether the termination of the service of the Petitioner with effect from 20.11.2009 was legal and justified?*
- II) *Pursuant to Appeal dated 11.03.2010 of the Petitioner, despite resolution/decision of the Authority in its Authority Meeting dated 10.11.2010 to re-engage the Petitioner, whether the Management of BDA was justified in not reinstating/re-engaging the Petitioner?*
- III) *Despite the Award dated 30.12.2004 passed in I.D. Case No.74 of 2003, vide which a direction was given to regularize the services of 113 concerned Workmen, including the Petitioner, who have completed five years of service in General Category and three years of service in S.C. & S.T. Category, which was confirmed by this Court in W.P.(C) No.5319 of 2005 and*



*reaffirmed by the Supreme Court in SLP(C) No.20736 of 2010, whether it was open for the Opposite Party-Management to single out the Petitioner by not regularizing his service on the plea of non-fulfillment of conditions vide Finance Department Resolution dated 15.05.1997?*

*IV) Whether the Finance Department Resolution dated 15.05.1997 will have an overriding effect over the Award dated 30.12.2004 passed in I.D. Case No.74 of 2003, which was published on 14.01.2005 in the Gazette in terms of Section 17 and came into effect from 13.02.2005 in terms of Section 17A of the I.D. Act. 1947?*

*V) To what relief, if any, the Petitioner is entitled to?*

**10.** So far as Point Nos.I & II, both being interlinked, are dealt with and answered together for the sake of brevity.

**10.1.** As is revealed from the record, admittedly, the Petitioner was engaged as a DLR Assistant (Clerk) in the Opposite Party Organization on 03.08.1994 and continuously worked for about 12 years in the Information Section of B.D.A. till 05.01.2007. Thereafter, he was



relieved from the said Section and gave his joining report before the Establishment Officer on 06.01.2007. Though, he was working as a Clerk/DLR Assistant in the information section, after he was relieved from Information Section on 05.01.2007, instead of assigning him clerical nature of jobs, to the reason best known to the Opposite Party-Management, he was asked to work in the park maintained by B.D.A. Thereafter, he was charge sheeted on 24.10.2008 for unauthorized absence from duty. As is revealed from the disengagement order (Annexure-4), the Petitioner submitted his explanation on 31.10.2008 denying the allegations/charges brought against him taking a stand therein that Garden-In-charge of the Horticulture Wing, as a token of his presence in the Park, did not allow him to sign the attendance register. An enquiry was allegedly conducted by the O.S.D. (Legal) behind the back of the Petitioner. Based on the report of the Garden Assistant, Horticulture Officer, Chief Horticulturist and Enforcement Officer-I, without any departmental proceeding and without affording any opportunity of hearing, the Petitioner was disengaged from service on 20.11.2009 in violation of principles of natural justice.

**10.2.** Being aggrieved, the Petitioner preferred an Appeal on 11.03.2010 before the Chairman, Bhubaneswar Development Authority, Bhubaneswar, which was placed



before the Authority of B.D.A. in its Authority Meeting held on 10.11.2010. In the said minutes of meeting held on 10.11.2010, though it was resolved to re-engage the Petitioner with a warning and it was further resolved that his case for regularization like other DLRs would be considered, to the reason best known, he was never re-engaged/reinstated in service in terms of the said Resolution of the Board dated 10.11.2010. That apart, no communication was made to the Petitioner assigning the reason thereof not to re-engage/reinstate him in service in terms of the said decision taken in the Authority Meeting dated 10.11.2010. Much thereafter, pursuant to the 133<sup>rd</sup> Authority Meeting held on 23.11.2016, it was decided not to regularize the Petitioner's service referring to Finance Department Resolution dated 15.05.1997, which mandates that for regularization of services, the workers should have worked under the administrative control of the department concerned directly for a minimum period of 10 years and the engagement of 240 days in a year shall be considered as a complete year of engagement for the said purpose.

**10.3.** In the Counter Affidavit filed by the Opposite Party Nos.2 & 3, a stand has been taken before this Court that the Petitioner worked as a DLR Assistant/Clerk with effect from 03.08.1994 and worked in different branches of B.D.A. till 05.01.2007. Thereafter, the Petitioner allegedly



remained absent from duty without any intimation and worked only for four days during the year 2007 and was charge sheeted for unauthorized absence and negligence in duty, followed by initiation of departmental enquiry giving opportunity of hearing to the Petitioner. The said stand of the Opposite Parties has been denied by the Petitioner in his Rejoinder. No document has been appended to the Counter Affidavit so also to the Further Affidavit to demonstrate before this Court that pursuant to the charge sheet dated 24.10.2008, though the Petitioner submitted his explanation on 31.10.2008 denying the charges, a regular departmental proceeding was conducted to prove the charges brought against the Petitioner giving him due opportunity of hearing, following the principles of natural justice. No document has also been appended to the Counter Affidavit or Further Affidavit to demonstrate before this Court that pursuant to a regular enquiry, a report being submitted by the O.S.D. (Legal), the same was furnished to the Petitioner along with a second show cause notice, thereby giving him an opportunity to have his further say in the said regard before issuance of disengagement order dated 20.11.2009. Rather, in the writ petition it has been pleaded that the Petitioner submitted his explanation on 31.10.2008 denying the charges and his disengagement from service with effect from 20.11.2009 to be in violation of principles



of natural justice. In the Rejoinder also it has been stated that during pendency of the said proceeding, the Petitioner was disengaged from service with effect from 20.11.2009 on a false plea of unauthorized absence, which order was later recalled by the Authority. An Appeal being preferred against such illegal action, a decision was taken in the Authority Meeting to reinstate him in service.

**10.4.** Admittedly, an Appeal being preferred by the Petitioner on 11.03.2010, it was resolved in the Authority Meeting held on 10.11.2010 to re-engage the Petitioner. However, no reason has been assigned in the Counter as to why the Opposite Party-Management did not act in terms of the said decision dated 10.11.2010 taken in the Authority Meeting to re-engage the Petitioner till rejection of his case for regularization vide subsequent decision taken in the Authority Meeting held on 23.11.2016, which was only confining to the issue regarding regularization of service of the Petitioner. The said Resolutions of the Authority of B.D.A, dated 10.11.2010 and 23.11.2016, being relevant, are reproduced below for ready reference.

**Extract from the Resolution of the Authority  
Meeting dt. 10.11.2010**

*“Sri Kailash Ch. Das, D.L.R., was disengaged earlier for poor performance in discharging the duty properly. Sri Das has appealed before the Hon’ble Chairman on several occasions. The matter of re-engagement of Sri Das was discussed in details. On humanitarian grounds, **it was decided to re-***



***engage Sri Das from the date of issue of order in this regard, with a warning of not committing such mistakes in future.***

***The case of Sri Das will be considered for regularization in service like other DLR employees after observing all formalities.”***

***(Emphasis supplied)***

**Extract from the Resolution of the Authority**  
**Meeting dt. 23.11.2016**

<b>Agenda</b>	<b>Item</b>	<b>Re-engagement &amp; regularization of Sri Kailash Chandara Das, Ex-DLR in BDA, Bhubaneswar.</b>
<b>No. 30/133</b>		<i>The matter was discussed in detail. <b>As per Finance Department Resolution No.22764/WFI dtd. 15.05.97</b> on absorption of NMR/ DLR/ Job Contract worker under regular Establishment, the case of <b>Shri Kailash Chandra Das, Ex-DLR (disengaged)</b> was not considered.</i>

***(Emphasis supplied)***

**10.5.** Admittedly it was never resolved in any of the subsequent meetings, including in the Authority Meeting dated 23.11.2016, not to re-engage/reinstate the Petitioner, in supersession of the decision taken in the Authority Meeting dated 10.11.2010. Further, the Management of B.D.A. has failed to demonstrate before this Court as to why the Petitioner was not re-engaged in service despite the decision taken in the 116<sup>th</sup> Authority



Meeting of B.D.A. held on 10.11.2010, even though there was no legal embargo to implement the said decision of the Apex body, which resolved to re-engage the Petitioner with a warning not to commit such mistake in future.

**10.6.** Further, the stand taken in the Counter as well as Additional Affidavit are also contradictory to each other. In the Counter a stand has been taken that the Petitioner was first engaged as a DLR Assistant (Clerk) on 03.08.1994 and worked in different branches of BDA till 05.01.2007. Thereafter, he allegedly remained absent from duty without intimation and worked only for four days during the year 2007. However, in the Further Affidavit, which was filed by the Opposite Party Nos. 2 and 3 pursuant to order dated 02.08.2024, a different stand has been taken therein. Though an order was passed on 02.08.2024 to file Attendance Sheet/Work Sheet, a salary statement was filed in form of Further Affidavit stating therein that the Petitioner remained unauthorisedly absent which warranted for his disengagement. He was disengaged while he was working in the Enforcement Section w.e.f 05.01.2007. As he remained unauthorisedly absent from duty his engagement was treated discontinued after 05.01.2007. The Petitioner was asked to furnish explanation vide letter No.2289 dtd.9.3.2007 and Memo No.8687 dtd.24.10.2008. After due enquiry, the Enquiring Officer found that charges were established and



basing on that the order of disengagement was issued vide Memo No. 13289 dtd.20.11.2009, which has been denied by the Petitioner in his Rejoinder Affidavit. Rather, it has been stated that how a person can be disengaged twice; first on 05.01.2007 and again on 20.11.2009.

**10.7.** Further, as is revealed from the disengagement order dated. 20.11.2009 (Annexure-4), there is a mention regarding noting made in the Attendance Register of Kharavela Park to the effect that, for the months of August, September, October and November, 2007, the Petitioner had only signed the attendance register without doing any work in the park. Hence, this Court fails to appreciate such stand taken in the Further Affidavit that, if the Petitioner's engagement was treated discontinued after 05.01.2007 because of his absence, how he could sign the Attendance Register for the months of August, September, October and November, 2007 in Kharavela Park. Rather, as is revealed from the said disengagement order, in response to a show cause notice vide letter No.403 dt.29.9.2007 of the Chief Horticulturist (I/C), vide which the Petitioner was asked to show cause as to why the period for which he failed to attend his duties should not be treated as "no work no pay", the Petitioner's stand was that since he was engaged as an Assistant and drawing the salary @ Rs.82.50 per day, he may be assigned the duties of office work. However, it was



presumed by the Enquiry Officer that the Petitioner indirectly admitting that he was not prepared to perform the duty in the park.

**10.8.** It is further revealed from the said disengagement order that the Chief Horticulturist (I/C), vide his notes dated 8.10.2007, informed the Secretary, B.D.A. that as there was no official work to be performed at the site (park), the Petitioner could be shifted to any other Division having office work.

**10.9.** Hence, this Court is unable to understand as to why the Management of B.D.A. posted the Petitioner in a park after 05.01.2007, where there was no clerical job to be assigned in the park and the Petitioner was admittedly doing clerical jobs as a DLR Clerk from 1994 till 05.01.2007. Hence, this Court is of prima facie view that the allegation of unauthorised absence under such forced circumstances is false and seems to be mala fide, which is further fortified with the conduct of the Management of B.D.A. in not reinstating the Petitioner in service despite the decision of the Apex Body in its 116<sup>th</sup> Meeting dated 10.11.2010.

**10.10.** Law is well settled that, where termination of service/dismissal is preceded by a departmental proceeding, the Enquiry Report has to be furnished to the delinquent, thereby giving him/her an opportunity to have his/her say on the said Report. Non-supply of enquiry



report, vide which the delinquent was found guilty by the Enquiry Officer, vitiates the enquiry so also the subsequent action of the Management, based on such faulty enquiry. Law is also well settled that if the termination of service of an employee is in violation of the principles of natural justice, such action is inevitably to be declared as illegal and unjustified. The Opposite Party-Management has failed to satisfy this Court by filing document to the effect that there was a regular enquiry before punishing the Petitioner by way of disengagement, so also furnishing of enquiry report to the Petitioner.

**10.11.** Hence, from the admitted pleadings, documents on record and after taking into consideration the submissions made by the learned Counsel for the parties so also the settled position of law and for the reasons detailed above, this Court is of the view that the termination of service of the Petitioner with effect from 20.11.2009, under the guise of disengagement order, which is punitive, was neither legal nor justified. This Court is of further view that the Opposite Party-Management (B.D.A. Authority) was also not justified in not re-engaging/reinstating the Petitioner despite the decision of the Authority in its 116<sup>th</sup> Meeting dated 10.11.2010 to re-engage him in service and issue order in the said regard. Point Nos.I & II are answered accordingly in favour of the Petitioner.



**11.** So far as Point Nos.III & IV, the said points being interlinked, are also dealt with and answered together for the sake of brevity.

**11.1.** Admittedly, a reference being made by the State Government to the Labour Court, Bhubaneswar at the instance of the B.D.A. Workers' Association, which was registered as I.D. Case No.74 of 2003, after giving due opportunity to the parties, an Award was passed by the learned Labour Court on 30.12.2004 in terms of Section 16 of the I.D. Act, 1947. The said Award was notified in the Gazette on 14.01.2005 in terms of Section 17 of the I.D. Act, 1947. As prescribed under Section 17A of the I.D. Act, 1947, after expiry of 30 days from the date of such Notification, the Award came into effect on 13.02.2005. The said Award was challenged by the Opposite Party-Management (B.D.A.) in W.P.(C) No.5319 of 2005. The writ petition was dismissed vide judgment dated 11.01.2010 with an observation that there is no illegality or perversity in the impugned Award deserving interference by this Court in exercise of its plenary jurisdiction under Article 226 of the Constitution. Further the said Award so also Judgment of this Court, being challenged by the B.D.A. Management before the Supreme Court in SLP(C) No.20736 of 2010, the SLP stood dismissed on 06.08.2010, thereby confirming the said Award passed by the Labour Court, Bhubaneswar. It is apposite to mention



here that during hearing of the present writ petition, it was ascertained that, though the Award passed in I.D. Case No.74 of 2003 was challenged in W.P.(C) No.5319 of 2005, the coordinate Bench did not stay operation of the impugned Award passed in I.D. Case No.74 of 2003 till dismissal of the said writ petition. As is further revealed from the record, though the Supreme Court, vide order dated 06.08.2010, condoned the delay in preferring the SLP(C) No.20736 of 2010, but on the very same day dismissed the Special Leave Petition. Thus the said Award came into force with effect from 13.02.2005.

**11.2.** Hence, the Award dated 30.12.2004 passed in I.D. Case No.74 of 2003, which came into force with effect from 13.02.2005, on dismissal of SLP, has attained finality since 06.08.2010. At this juncture, it would be apt to reproduce below the operative portion of the said Award dated 30.12.2004 for ready reference:

**“10.** Hence it is ordered :

*That the action of the management of Bhubaneswar Development Authority, Bhubaneswar is not regularising the services of 113 numbers of N. M. R. / D. L. R. / ad hoc workmen is Illegal and unjustified. **The above 113 workmen are entitled for regularisation of their respective services from the date they have completed five years of service in respect of general category of workmen and three years of service in respect of the Scheduled Caste and Scheduled Tribe workmen.** The management is directed to*



*consider the case of the concerned 113 workmen for regularisation at an early date.*

*The reference is thus answered accordingly.”*

**(Emphasis supplied)**

**11.3.** It is amply clear from the said direction given by the learned Labour Court, Bhubaneswar that the Labour Court was of the view that the action of the Management of Bhubaneswar Development Authority, Bhubaneswar in not regularizing the service of the 113 numbers of NMR/DLR/Ad-hoc Workmen is illegal and unjustified. Accordingly, it was held that all the 113 concerned workmen are entitled for regularization of their respective services from the date they have completed five years of service in respect of General Category of Workmen, and three years of service in respect of Scheduled Caste and Scheduled Tribe workmen. Accordingly, a direction was given to consider their cases for regularization at the earliest.

**11.4.** Admittedly, the Petitioner-Workman belongs to General Category and he was one of the concerned workmen in I.D. Case No.74 of 2003. Further, the direction of the Labour Court was to regularize the services of the concerned Workmen in the General Category, who have completed “five years of service”, not “five years of continuous service”. Admittedly, the Petitioner worked with effect from 03.08.1994 till 05.01.2007 and thereafter also .Finally he was illegally



disengaged from service w.e.f. 20.11.2009. Further, he had already worked for more than ten years of service as on the date of passing of the Award dated 30.12.2004 in I.D. Case No.74 of 2003, his date of first engagement as a DLR Assistant/Clerk being 03.08.1994.

**11.5.** In terms of the said Award dated 30.12.2004, passed in I.D. Case No.74 of 2003, his services ought to have been regularized with effect from 03.08.1999. However, during operation of the said Award, on the plea of pendency of W.P.(C) No.5319 of 2005 before this Court, which stood dismissed on 11.01.2010, so also pendency of SLP(C) No.20736 of 2010 before the Supreme Court, which stood dismissed on 06.08.2010, his claim for regularization so also similarly placed 112 DLRs were not considered by the Management. Rather, his services were brought to an end illegally with effect from 20.11.2009.

**11.6.** It is amply clear from the operative portion of the Award, as quoted above, a direction was given by the Labour Court in I.D. Case No.74 of 2003 to regularize the services of the concerned workmen with retrospective effect from the day, when all of them completed five years of service, not “continuous service” as defined under Section 25-B of the I.D. Act. That apart, the Petitioner workman had worked for more than ten years as on the date of passing of Award dated 30.12.2004 in I.D. Case No.74 of 2003. Further, as is revealed from the salary



statement of the Petitioner, appended to the Further Affidavit of the Management as Annexure-A/2, the Petitioner has worked for more than 240 days in all the years, excepting in the years 1999, 2003 and 2005, in which years he allegedly worked for 230 days, 227 days and 238 days respectively. Admittedly, the Petitioner, being a DLR, was paid for the days he actually worked. In his Rejoinder Affidavit, which has been filed in response to the Further Affidavit filed by the Management, the Petitioner has categorically stated that those year wise working days, as reflected in the salary statement, are excluding 52 Sundays, 12 second Saturdays and holidays, including national holidays. Law is well settled that while calculating 240 days in terms of definition of “continuous service”, as defined under Section 25-B of the I.D.Act,1947, weekly off days and holidays are to be taken note of.

**11.7.** In a recent judgment in ***The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar v. Prasanna Kumar Sethi***, reported in 2025(I)ILR-CUT1082, relying on the Supreme Court Judgments in ***Surendranagar District Panchayat v. Dahyabhai Amarsinh***, (2005) 8 SCC 750, so also in ***Workman of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation***, reported in (1985) 4 SCC 71, this



Court held that weekly rest days, Sundays and paid holidays are to be counted while computing 240 days.

**11.8.** That apart, when similarly placed employees' services were regularized in terms of the Award, those who have completed five years of service, debarring the Petitioner from such relief, relying on the Finance Department Resolution of 10 years continuous service amounts to discrimination. Law is well settled that treating equals differently, without any rational basis, is contrary to constitutional morality and violates Articles 14 and 16 of the Constitution of India, which underscores the duty of the employer to uphold equality within its own administration.

**11.9.** Hence, this Court is of the view that the Management of B.D.A in its Authority Meeting held on 23<sup>rd</sup> November, 2016 was not justified in rejecting the claim of the Petitioner for regularization of his service, relying on the Finance Department Resolution dated 15.05.1997 regarding absorption of NMR/DLR/Job Contract Workers under regular Establishment, as the Petitioner had already worked for more than 10 years of continuous service by the time the Award dated 30.12.2004 was passed by the Labour Court, Bhubaneswar. Such a view is also based on the admitted facts on record that, the Labour Court directed to regularize the services of concerned workmen in I.D. Case No.74 of 2003 belonging to general category, with retrospective effect from the



date each of them completed 5 years of service, not 10 years of continuous service in terms of the Finance Department Resolution dated 15.05.1997.

**11.10.** It is worthwhile to mention here that, in view of the provisions enshrined under Section 18(3)(c) of the I.D. Act, 1947, the Award passed in I.D. Case No.74 of 2003 is binding on the Opposite Party-Management. Section 18 of the Act, 1947, being relevant, is extracted below:

**“18. Persons on whom settlements and awards are binding.-** (1) *A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.*

(2) *Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.*

(3) *A settlement arrived at in the course of conciliation proceedings under this Act 5[or an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on-*

**(a) all parties to the industrial dispute;**

**(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the**



*case may be, records the opinion that they were so summoned without proper cause;*

***(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;***

*(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”*

***(Emphasis supplied)***

**11.11.** Admittedly, the Award dated 30.12.2004 passed in I.D. Case No.74 of 2003 is an outcome under the special statute ,i.e., Industrial Disputes Act, 1947, and is binding on the parties to the reference made by the appropriate Government. The said Award being published in terms of Section 17 of the Act,1947 on 14.01.2005, came into force with effect from 13.02.2005 in terms of Section 17-A of the said Act,1947. Further, the said Award has not only been confirmed by this Court in W.P.(C) No.5319 of 2005 holding that there is no illegality or infirmity in the said Award, but also has been reaffirmed by the Supreme Court in SLP(C) No.20736 of 2010, which stood dismissed on 06.08.2010.



**11.12.** Law is well settled that, executive instructions or administrative resolutions do not possess the authority to override statutory adjudications or judicial determinations.

**11.13.** The Supreme Court in *Union of India v. K.M. Shankarappa*, reported in (2001) 1 SCC 582 held that administrative or executive authorities cannot override, review, or revise judicial or quasi-judicial orders. Paragraph 7 of the said Judgment, being relevant, is reproduced below:

*“7. We are unable to accept the submission of the learned counsel. The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final and binding so far as the executive and the Government is concerned. To permit the executive to review and/or revise that decision would amount to interference with the exercise of judicial functions by a quasi-judicial Board. It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the executive. Under our Constitution the position is reverse. **The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The legislature may, in certain cases, overrule or nullify a judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught a judicial order. The executive***



**cannot sit in an appeal or review or revise a judicial order.** *The Appellate Tribunal consisting of experts decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal.”*

**(Emphasis supplied)**

**11.14.** The Supreme Court in a recent judgment in **Adani Power Ltd. and Anr. Vs. Union of India (UOI) and Ors.**, reported in 2026 SCC OnLine SC 11, reiterating the said principle, held that judicial pronouncements, which have attained finality, constitute binding commands of law, not advisory opinions and administrative authorities are constitutionally bound to comply with them.

**11.15.** Hence, this Court is of the view that in view of the Award dated 30.12.2004 passed in I.D. Case No.74 of 2003, which regulates the issue regarding regularization of service of the Petitioner, the Finance Department Resolution dated 15.05.1997 has no applicability to the said issue. It was incorrectly/wrongly applied to the case of the Petitioner to deny/debar him from the benefits flowing out of the said Award passed in I.D. Case No.74 of 2003. Further, this Court is of the view that the said Government Resolution dated 15.05.1997 cannot have an overriding effect on an Award passed by the Industrial



Adjudicator in terms of Section 16 of the I.D. Act, 1947, more particularly after its publication under Section 17 and coming into force in terms of Section 17-A of the Act, 1947. Issue Nos.3 & 4 are answered accordingly.

**12.** So far as Issue No.V regarding the relief, if any, the Petitioner is entitled to, law is well settled that if the termination of service of an employee/workman is held to be illegal, the said action of the Management cannot deprive an employee of continuity of service and consequential benefits. In **Deepali Gundu Surwase Vrs. Kranti Junior Adhyapak Mahavidyalaya**, reported in (2013) 10 SCC 324, the Supreme Court, referring to catena of its earlier judgments on the said issue, including a three-Judge Bench judgment in **Hindustan Tin Works (P) Ltd. v. Employees of Hindustan Tin Works (P) Ltd.**, reported in (1979) 2 SCC 80 : 1979 SCC (L&S) 53, held as follows:

***“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities.*”**



*They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. **The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.***

***(Emphasis Supplied)***

**12.1.** So far as the post ,scale of pay, grade etc. in which the Petitioner's service is to be regularised, from the Affidavit dated 02.08.2025, which was filed being so directed vide order dated 24.06.2025, it is revealed that, pursuant to the Award passed in I.D Case No. 74/2003 and the orders of this Court in W.P (C) No.5319/2005 so



also the Supreme Court in S.L.P No.20736/2010, as per the decision taken in 116th and 117th Authority Meeting held on 10.11.2010 and 10.02.2011 respectively, vide Office Order dtd. 04.03.2011, 61 numbers of workmen were regularized with effect from 06.08.2010. It is further revealed from the Office Order dtd. 04.03.2011, which forms part of the said Affidavit, Dwijabar Sahoo and Manoranjan Pal, who were working as DLR Assistant (Clerk) like the Petitioner, were regularised as Clerk(JR Clerk ) in Pay Band-1 with Scale of pay of Rs.5,200 - Rs.20,200/- and Grade Pay of Rs.1900/-.

**13.** In view of the discussions made in the forgoing paragraphs, materials on record, so also views taken by this Court while dealing with Issue Nos.1 to 4, as detailed above, this Court directs as follows:

**13.1.** The Petitioner be reinstated in service with retrospective effect from 20.11.2009, i.e., the date on which he was illegally dis-engaged from service while working as a DLR Assistant (Clerk).

**13.2.** He shall be paid full back wages as a DLR with effect from 20.11.2009 till 06.08.2010 and other consequential benefits, if any, including continuity of service.

**13.3.** So far as regularization of service of the Petitioner, in terms of the Award dated 30.12.2004 passed in ID. Case No.74 of 2003, the Petitioner's service was



required to be regularized with effect from 03.08.1999, i.e., the date on which he completed the five years of service. However, the Petitioner has prayed for regularizing his service with effect from 06.08.2010, i.e., the date with effect from which the services of similarly placed concerned Workmen/DLRs were regularized by the Management of B.D.A. Hence, the Opposite Party-Management (Opposite Party Nos.2 & 3) are directed to regularize the services of the Petitioner as Clerk (Jr. Clerk) in Pay Band-1 with Scale of pay of Rs.5,200 - Rs. 20,200/- and Grade Pay of Rs.1900/-, as was done in case of similarly placed concerned Workmen.

**13.4.** The Petitioner is entitled for all consequential benefits, including pay fixation, arrear salary and promotion, what he would have got, had his services been regularized with effect from 06.08.2010.

**13.5.** It is made clear that, on production of certified copy of this Judgment, the Petitioner shall be reinstated in service forthwith and be paid the minimum regular scale of pay meant for the post of Clerk (Jr. Clerk) so also other pay and perks / service benefits till fixation of his scale of pay and grade, as directed vide paras 13.03 & 13.04 above.

**13.6.** The Petitioner's inter se seniority in the post of Clerk (Jr. Clerk) shall be fixed at par with similarly placed



other co-employees/workmen, who were concerned in I.D. Case No.74 of 2003.

**13.7.** The pay fixation, inter se seniority and other consequential reliefs, as directed above, shall be worked out and all the arrears are to be paid to the Petitioner within a period of three months hence.

**14.** The writ petition is allowed and disposed of accordingly. No order as to costs.

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**S.K. MISHRA, J.**

**Orissa High Court, Cuttack**  
*The 6<sup>th</sup> March, 2026/Prasant*