consideration the defence raised by the Bank, has no substance.

21. In view of above discussion, the order passed by the Commercial Court rejecting the injunction application as well as plaint under Order VII Rule 11 C.P.C. does not suffer from any error of fact and/or law. Consequently, the appeal fails and is **dismissed**.

(2025) 4 ILRA 1027
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal No. 846 of 2024

State of U.P. & Ors. ...Applicants
Versus
Mahaveer Singh & Ors. ...Respondents

Counsel for the Applicants:
Ratan Deep Mishra, C.S.C., S.C.

Counsel for the Respondents:
Vinod Kumar Singh

Civil Law - U.P. Regularization of Persons Working on Daily Wages or on Work Charge or on Contract in Government Departments on Group 'C' and Group 'D' Posts (Outside the Purview of U.P. Public Service Commission) Rules, 2016 - Rule 6(1)(i) - Constitution of India, 1950 - Article 16 - Regularisation - Continuous working - Petitioners have not rendered continuous service over years - Whether this interruption in service was due to their own voluntary absence or was caused by artificial break i.e. a deliberate act on part of employer preventing them from working, a question that requires examination by competent authority - As per Rules authority competent to assess is Selection Committee - Duty of Selection Committee to examine work records, determine nature, cause of absence period - No consideration has been made, nor have petitioners been given opportunity to explain reasons for their absence - Claim of regularization must be reconsidered afresh - Petitioners must be afforded proper opportunity of hearing, including chance to explain period of their absence - Selection Committee shall reconsider entire matter, pass reasoned order - Impugned order, set aside. (Para 9)

Appeal allowed. (E-13)

List of Cases cited:

1. Janardan Yadav Vs St. of U. P. & ors., 2008 (1) UPLBEC 498, (Para 18 to 25)

2. Jagannath Yadav Vs St. of U.P. & ors., 2019 SCC OnLine All 8274

3. Janardan Yadav Vs St. of U.P. & ors., 2008 (2) ESC 1359, (Para 10)

4. St. of U.P. Vs Ram Roop Yadav, Special Appeal No. 47 of 2016

5. St. of U.P. Vs Raj Kumar Srivastava (2017) 4 UPLBEC 3359, (Para 171 to 175)

6. Secretary, St. of Karn. & ors. Vs Umadevi (3) & ors.; (2006) 4 SCC 1

(Delivered by Hon'ble Ashwani Kumar Mishra, J. & Hon'ble Praveen Kumar Giri, J.)

1. This intra-court appeal is filed by the State challenging the judgment of learned Single Judge rendered in Writ-A No. 19200 of 2019, whereby, the writ petition has been allowed and a direction has been issued to the State-respondent to regularize the services of the respondents-petitioners.

2. It transpires that respondents/petitioners had earlier approached this Court by filing Writ-A No. 6580 of 2019 which came to disposed of vide order dated 18.07.2019. The order reads as under:

"Despite grant of opportunity on 26.4.2019 and again on 23.5.2019, learned Standing Counsel has not been able to obtain instructions. It is submitted that the authorities have been communicated but no instructions have been received so far.

Petitioners, who are six in number, alleged that they were engaged in the Government Gardens at Agra as Mali on different dates between 1998 to 2001 and except for certain artificial breaks have continuously being working till date. It is stated that their claim for regularization is covered under the Uttar Pradesh Regularisation of Persons Working On Daily Wages or On Work Charge or On Contract In Government Departments On Group "C" and Group "D" Posts (Outside The Purview Of The Uttar Pradesh Public Service Commission) Rules, 2016 notified on 12th September, 2016, but their claim of regularisation has not been examined by the authority concerned. Repeated representations made since have not been bestowed any consideration, as such, petitioners are before this Court.

Learned Standing Counsel states that an appropriate decision would be taken in respect of claim of the petitioners, by the competent authority, in accordance with law.

In the facts and circumstances, noticed above, this writ petition stands disposed of with a direction upon the respondent no. 3 to accord consideration to the petitioners' claim for being regularized, in accordance with law, by means of a reasoned order to be passed, within a period of three months from the date of presentation of a certified copy of this order.

Any artificial break in the working of the petitioners would be ignored and shall not be read against the petitioners. It would, however, be open for the authorities to verify as to whether petitioners had been working on the relevant date i.e. 31st December, 2001 and the second cut off i.e. 12th September, 2016 and have remained in employment throughout except for artificial breaks."

3. Pursuant to above direction, the Deputy Director, Horticulture, Agra Region, Agra vide order dated 14.10.2019 has rejected the claim of the respondents/petitioners on the ground that they had not worked continuously. The officer concerned has placed reliance upon a chart prepared by the officer in respect of the working of the respondents-writ petitioners which is extracted herein:

क्र० सं०	दैनिक श्रमिक का नाम व पिता/पति का नाम	जन्म तिथि	जाति	शैक्षिक आर्हता	लगातार कार्य प्रारंभ करने की तिथि	अभियुक्ति
1	श्री नईम पुत्र मज्जो	01.07.1980	पि०जाति		सितम्बर 2000	वर्ष 2000-01 के माह सितम्बर 2000 से वर्तमान तक कार्यरत है।
2	श्री गगन देव पुत्र श्री चरनदीप प्रसाद	01.07.1976	पि०जाति		दिसम्बर 2004	वर्ष 1998-99 में 26 दिन 1999-2000 में 119 दिन तथा

						वर्ष 2001-02 में 23 दिन कार्य किया तथा वर्ष 2000-01 एंव2002-03, वर्ष2003-04 एंव वर्ष 2004-05 के माह नवम्बर 2004 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। वर्ष 2004-05 के माह दिसम्बर 2004 से वर्तमान तक कार्य कर रहे हैं।
3	श्री सन्तोष कुमार उर्फ शान्ती प्रसाद पुत्र श्री रामगोपल		सामान्य		20.03.2005	कार्यालय अभिलेखों के अनुसार सन्तोष कुमार उर्फ शान्ती प्रसाद पुत्र श्री रामगोपल नाम के किसी व्यक्ति द्वारा कभी भी दैनिक श्रमिक के रूप में कार्य नहीं किया गया है बल्कि श्री सन्तोष कुमार पुत्र श्री रामगोपाल द्वारा वर्ष 2004-05 के माह मार्च 2005 से वर्तमान तक कार्य कर रहे हैं।
4	श्री चरन सिंह पुत्र श्री रामदयाल		पि०जाति		17.8.2005	वर्ष 1998-1999 में 05 दिन कार्य करने के उपरान्त वर्ष 2005-06 के माह जुलाई 2005 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। वर्ष 2005-06 के माह अगस्त 2005 से वर्तमान तक कार्य कर रहे हैं।
5	श्री महाबीर सिंह पुत्र श्री लाल सिंह		पि०जाति		03.5.2006	वर्ष 1988-99 में 60 दिन, वर्ष 1999-2000 में 10 दिन कार्य करने उपरान्त माह अप्रैल 2005 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। पुनः वर्ष 2005-06 के माह मई 2005 में 26 दिन कार्य

						करने के उपरान्त माह अप्रैल 2006 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। वर्ष 2006-07 के मई 2006 से वर्तमान तक कार्य कर रहे हैं।
6	श्री महाबीर पुत्र श्री बैजनाथ				03.5.2005	वर्ष 1988-99 में 57 दिन कार्य करने के उपरान्त वर्ष 2006-07 के माह अप्रैल 2006 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। वर्ष 2006-7 के माह मई 2006 से वर्तमान तक कार्य कर रहे हैं।

4. Learned Single Judge has taken note of the U.P. Regularization of Persons Working on Daily Wages or on Work Charge or on Contract in Government Departments on Group 'C' and Group 'D' Posts (Outside the Purview of U.P. Public Service Commission) Rules, 2016 and has observed that rule 6(1)(i) provides that a person who is considered to be regularized must be directly engaged or employed on or before 31st December, 2001 and must be still engaged or employed or deployed or working as such on the date of commencement of the rules.

5. Learned Single Judge has relied upon the judgment of this Court in **Janardan Yadav Vs. State of U. P. and others, 2008 (1) UPLBEC 498**, wherein, the learned Single Judge of this Court while interpreting the pari materia provisions of previous Regularization Rules of 2001 observed that requirement of continuous working is not contemplated in the Rules and if such a condition is read into the provisions, it would amount to adding words in the Rules which would be impermissible. Learned Single Judge has accordingly observed as under:

"18. Here in this case the rule contemplates two conditions to be fulfilled: (a). A person must be appointed prior to cut off date; and (b). A person must be working/ employed/ deployed on the date of enforcement of the rules.

19. Looking to the chart that has been given in the order impugned I find Petitioners Mahaveer Singh, Mahaveer, Gagan Dev, Charan Singh and Naime to be appointed prior to the cut off date and that they have been working continuously on the enforcement of the Regularization Rules, 2016. Insofar as Santosh Kumar @ Shanti Prasad, petitioner No.- 6 is concerned, he is also stated to be working since 2004-05 continuously whereas the records are not available regarding his initial engagement.

20. Thus, it is clear that except Santosh Kumar @ Shanti Prasad all other petitioners were appointed prior to the cut off date, on daily wage basis by the respondent No.- 4 as a class IV employee (Group – D category) prior to the cut off date 31st December, 2001 and have been admittedly working on the date of

enforcement of the Regularization Rules, 2016 on 12th September, 2016.

21. In view of the above, the second question need not be gone into as I am able to conclude from above discussion that an employee/ daily wager who is required to be considered under the Regularization Rules, 2016, is required to be engaged prior to the cut off date and should be employed/ deployed/ working on the date of enforcement of the Regularization Rules, 2016.

22. Upon simple interpretation from the language of the rules it is clear that an employee to be considered for regularisation is not required to have continuity of service from the date his initial appointment for regularisation under Rules, 2016.

23. In view of the above, the writ petition succeeds and is allowed.

24. The respondents are directed to pass formal orders giving benefit of regularisation to the petitioner Nos. 1 to 5 in the light of the observations made hereinabove.

25. Insofar as the petitioner No.- 6 is concerned he is directed to place his document of initial engagement first, if available to him and in the event any such document is filed, the respondent will consider the same and upon verification of the document if found genuine, the concerned respondent will be given the same benefit of regularisation to the petitioner No.- 6 also as he has been admitted to be working with the respondent No.- 4 on the date of enforcement of Regularization Rules, 2016 as a daily wager."

6. Learned State Counsel has placed reliance upon a subsequent judgment of learned Single Judge in **Jagannath Yadav Versus State of U.P. and others, 2019 SCC OnLine All 8274**, wherein the previous judgment of this Court in **Janardan Yadav versus State of U.P. (supra)** has been considered. The judgement of learned Single Judge in the case of **Janardan Yadav Vs. State of U.P. and others, 2008 (2) ESC 1359** also fell for consideration before a coordinate Bench of this Court in Special **Appeal No. 47 of 2016, State of U.P. v. Ram Roop Yadav**. After noticing the judgments relied upon by learned Single Judge in the case of **Janardan Yadav (supra)**, the Division Bench has observed as under:

"We find that the judgment in the case of Sri Ram Yadav (supra) follows the judgment in the case of Janardan Yadav (supra) which, in our opinion, proceeds on complete non-consideration of Hindi version of Rules of 2001. Under the Hindi version of the Rules of 2001 a person is entitled for being considered for regular appointment under the Rules of 2001 only if he has been continuously working since prior to the cut-off date as mentioned in Rules of 2001 i.e. 29.06.1991 and the date of enforcement of Rules of 2001 i.e. 21.12.2001. The Hindi version of the relevant rules reads as follows:-

"इस नियमावली के प्रारम्भ के दिनांक को इस रूप में निरन्तर सेवारत हो."

A seven Judges Bench of this Court in Special Appeal No.622 of 1965 vide judgment dated 13.9.1974 has examined the issue with regards to doubt or ambiguity in any provision in the authoritative english text viz a viz the hindi text and while answering the question it has been held as under:-

"We are, therefore, of opinion that where there is some doubt or ambiguity in any provision in the authoritative English text, it is permissible to look into the Hindi text to remove the doubt or ambiguity. We

accordingly answer the question referred to this Bench in the affirmative."

Since in the facts of the case, we find that there had been a break of more than one and a half year in the working of the petitioner during the relevant period as has been admitted on record, it cannot be said that the petitioner had been working continuously as required under the Rules of 2001 so as to be considered for regularization. We may however clarify that there may be cases where there may be artificial break which can be ignored, but the continuous period of one and a half year of non-engagement in our opinion cannot be termed as artificial break.

For the reasons recorded above, as also in the case of Division Bench judgment of this Court in State of U.P. and others Vs. Chhiddi and another (supra), we find that the judgment and order of the learned Single Judge cannot be legally sustained and it is hereby set aside.

The special appeal is allowed."

7. The Division Bench of this Court in the **State of U.P. Versus Raj Kumar Srivastava (2017) 4 UPLBEC 3359** also considered the judgment of learned Single Judge in first **Janardan Yadav case** (supra) and observed as under:

"171. Reference has been made to the meaning of word of "continuous" and "continuing" given in the Black's Law Dictionary, Oxford dictionary of English, Law Lexicon and Hindi to English dictionary namely Vidhi Shabdawali of Government of India.

172. He has further relied upon the judgement of the learned Single Judge of this Court in Janardan Yadav (supra) and urged that the meaning of "continuing in service" as interpreted by the learned Single Judge may be accepted to hold that the daily wage Registration Clerks would be treated to be "continuing in service" between 29.06.1991 and 09.07.1998, and thus, they would be covered under the Regularization rules 1998 and their regularization, therefore, has to be held to be made in accordance with law.

173. We are afraid to accept the interpretation given by Sri J.N. Tiwari in as much as only artificial breaks or short breaks in service could be ignored for computing "continuous service" or holding that the incumbent was in "continuous service" of the department, for the purpose of regularization.

174. Further the benefit could be given only to those who remained in employment "continuously" or "continuing in service" giving the impression that their services were required continuously though they had been engaged on daily wages basis. The persons who had been appointed for few days in one year and did not work continuously for the whole one year or more than that between two relevant dates from 29.06.1991 till 09.07.1998, cannot be said to be in "continuous employment", working on the requirement of the Registration department. They cannot be said to be covered by the meaning of words "continuing in service" under the Regularization Rules' 1998. None of the daily wagers before us could demonstrate otherwise.

175. For the reasons indicated in the preceding part of this judgement and those indicated above, we reaffirm our view that the daily wage registration clerks working in the Registration Department were not entitled to be regularized under the Regularization Rules' 1998. The exercise of regularization

undertaken by the State Government in the year 2011 was an illegal exercise."

8. In the second case of **Janardan Yadav case** (supra) the learned Single Judge has observed as under:

"10. The very object of granting regularization is to make regular the appointments which have been made without following the procedure laid down in law. The intent is to end uncertainty for employees who are working for inordinately long period. This period is specified as 10 years in the Constitution Bench Judgment in Secretary, State of Karnataka and others Vs. Umadevi (3) and others; (2006) 4 SCC 1. It is this long length of service which gives justification for framing rules to regularise the services or else the engagement being contrary to recruitment rules itself would be hit by Article 16 of the Constitution of India. Continuous working for long periods, therefore, would be a sine qua non for the grant of relief of regularization in accordance with the rules. Contention that merely working on two dates without necessity of continuance in between (excluding artificial breaks), therefore, cannot be accepted. The petitioner's working in the present case is not found to be continuous (there is a gap of almost eight years). Petitioner's absence also cannot be ignored by treating it to be artificial break nor such absence can be ignored on the ground that it was involuntary and caused by the employers. His claim for regularization under the rules is, therefore, not shown to be covered. The decision of the Divisional Director (Forest) suffers from no illegality. The writ petition fails and is, accordingly, dismissed."

9. Having examined the arguments advanced on behalf of the appellant, we are of the opinion that the very object of granting regularization is to regularize the appointments which are made without following the procedure laid down in law. Article 16 of the Constitution of India otherwise contemplates equality of opportunity in matters of public employment. Any appointment made contrary to the rules of recruitment would thus be impermissible. It is only on account of continuous working for substantial long that the concept of regularization steps, which is manifestation of the concept of equity applied in the case of daily wagers who are continuing for long. Unless such working for continuously long length of time exists the decision to regularize such employee itself would be contrary to law. The working for inordinate long period has been specified as 10 years by the Supreme Court in Constitution Bench Judgement in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others; (2006) 4 SCC 1**. It is this long length of service which therefore gives justification for any rules to be framed to regularize the services or else the engagement otherwise being contrary to recruitment rules would be hit by Article 16 of the Constitution of India. Unless the requirement of continuous working is read into the rules, the Regularization rule itself would be open for challenge on the ground of it being violative of Article 16 of the Constitution of India. The only exception which can be continenced is the artificial break or period in which the employee is prevented from work by the employer. In the present case, we find that some of the persons have not worked continuously for several years. Whether these persons were prevented from working or was it a case of artificial break is an aspect which would require consideration by the competent authority. In the facts of the present case, the competent authority in terms of Rule 2016 is the selection committee which has to take note of the period of working. There is however no

consideration as to whether the period of absence is attributed to voluntary act on part of the writ petitioners or they were prevented from working by any act of the State authorities. Since on these material aspects we find that adequate opportunity to explain the circumstances has not been given to respondents-petitioners, as such we are of the view that the claim of the respondents-petitioners for regularization is required to be considered afresh, by the selection committee, after affording opportunity of hearing to the writ petitioners and to explain the period of absence from working. The chart annexed in the order impugned (extracted above) specifies the period of working of the writ petitioners. It would be open for all the petitioners to explain the period of absence and the selection committee would then take a decision as to whether such period of absence is attributed to any voluntary act on the part of the writ petitioners or they were prevented from working. It will also have to be seen whether it is a case of artificial break so as to prevent the action of the employer in not permitting the petitioners to work? Appropriate explanation would be offered within the period of four weeks. The selection committee shall accord fresh consideration to the claim of writ petitioner for regularization keeping in view the observations made above. Such consideration would be within a period of three months by passing a reasoned order.

10. Since the judgment of learned Single Judge omits to factor necessary aspects involved and also to facilitate a fresh consideration of appellant the judgment of learned Single Judge is set aside.

11. Consequently, special appeal succeeds and is allowed. The judgment and order impugned to this appeal is set aside. The matter stands remitted to the concerned authority for fresh consideration of cause in terms of observation made above.