



2026:DHC:5663-DB



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

Reserved on: 10 July 2026

Pronounced on: 17 July 2026

+ **W.P.(C) 6102/2017**

ANIL KUMAR & ORS

..... Petitioners

Through: Mr. Mahesh Srivastava and
Mr. Vaibhav Manu Srivastava, Advs.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Archana Gaur, CGSC
with Ms. Ridhima Gaur and Mr. Deepu
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

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17.07.2026

VINOD KUMAR, J.

1. The petitioners have filed the present petition under Article 226 of the Constitution of India laying a challenge to the order dated 15.12.2016 rendered by Central Administrative Tribunal, Principal Bench in OA No. 2989 of 2015 and other connected OAs whereby the said OAs filed by the petitioners were dismissed.



2. The admitted facts are that the petitioners were appointed as 'Badli' workers from 01.01.1999 to 31.12.1999 with Delhi Milk Scheme (i.e. respondent no.2), which is a 'factory' as defined in Section 2 (m) of the Factories Act 1948 and the terms and conditions of their employment are governed by Certified Standing Orders for the Employees of the Delhi Milk Scheme as certified under the Industrial Employment (Standing Orders) Act, 1946 (in short 'the Standing Order'). Para 4 (iii) of the Standing Order defines 'Badli' workers as under:

"4.(i) Classification:- The workers shall be classified as:-

(a) Casual

(b) Badli, and

(c) Apprentice

(ii).

(iii). 'Badli' means a worker who is employed for the purpose of working in place of regular employees who are temporarily absent.

*Provided that a badly worker who has **actually** worked for not less than 240 days in any period of 12 months shall be transferred to regular establishment governed by the Fundamental and Supplementary Rules."*

3. The above portion of the Standing Order provides that if a 'Badli' worker has actually worked for not less than 240 days in any period of 12 months, worker shall be transferred to regular establishment governed by the Fundamental and Supplementary Rules. The case of the petitioners is that they had completed more than 240 days in a year by counting weekly holidays, compensatory holidays in lieu of weekly holidays on which they worked and benefit of national holidays. Under Section 52 and 53 of the Factories Act 1948, workers are allowed weekly off and



such weekly off is counted as working day and they are duly paid. However, if the workers have to work on weekly off days, they shall be given a compensatory holiday. The stand of the petitioners is that not only the weekly off days, on which they had worked, should be counted but also the compensatory holidays granted in lieu of the said days be also counted for the purpose of calculation of 240 working days.

4. Vide impugned order, the Central Administrative Tribunal dismissed the OAs of the petitioners on the ground that when the payment for working on holidays had been given to the petitioners, the compensatory holiday in lieu of the same would not be added in counting of 240 days. The Central Administrative Tribunal held that if computed in this manner, the petitioners have not completed 240 days and are therefore not eligible for regularizing their service.

5. Learned Counsel for the petitioners submits that Central Administrative Tribunal did not take note of Rule 77 of Delhi Factory Rules 1950, which provides as to how compensatory holidays can be given to a particular worker. Further Form 9 prescribed under Rule 77 of the Delhi Factory Rules, 1950 has been provided to calculate the compensatory holidays in case of the workers whose weekly off has been lost.

6. On the other hand, learned Counsel for the respondent no.2 has countered the aforesaid submissions and argued that a 'Badli' worker is nothing but a contractual employee and if he does not complete 240 days in a year, he cannot get any benefit of the



Standing Order. It is argued that the petitioners want the re-computation of working days by adding the off days like Sundays on which they had worked as well as the compensatory holidays. It is submitted that in the present case, the petitioners had been paid for the work done on the off days/ Sundays. Therefore, compensatory holiday in lieu of such off days/Sundays cannot be counted in computation of 240 days. Learned Counsel for the respondent has relied upon an order of the Division Bench of this Court titled as ***UOI and Anr. v Shishpal and Ors., W.P.(C) 77/2007*** decided on **23.05.2013**, wherein it was held that since the petitioners had already been paid wages for work done on off days, no double benefit by treating the same as extra working day can be granted. It was further held that while recomputing the working days, only actual working days, weekly offs (Sundays) and national holidays are to be taken into consideration. It is submitted that as the petitioners are 'Badli' workers and have not worked for 240 days in a year, consequently they are not entitled for regularization.

7. It is further submitted by learned Counsel for the respondent no.2 that 'Badli' workers are substitutes for regular Mates and therefore cannot be regularized unless 240 days in a year are strictly completed as per Section 52. It is submitted that petitioners have not completed 240 days of attendance in any period of 12 months in a year. She explained that 'Badli' workers were engaged only in place of regular staff who remained absent or were on leave. Further the said practice was discontinued



w.e.f. 30.09.2000 as even the regular staff had become surplus. It is further stated that presently there is no vacancy for the post of Mate. Learned Counsel for the respondent no.2 relied upon a judgment of the Constitution Bench of Supreme Court of India in ***Secretary, State of Karnataka v Uma Devi 2006 (4) SCALE 197***, wherein it was held that temporary or casual workers are not entitled to regularization merely because they continued in service for some time. It is argued that since appointment of petitioners as 'Badli' workers was not made through any regular selection process, they are not entitled to regularization.

8. After having considered the rival submissions, we would like to specify that the only question before us is as to how the computation of working days has to be done. The Division Bench of this Court in ***Shishpal*** (*supra*) is directly on this point. It observed as under:

“..... The only issue which is raised before us, is that while recomputing the working days, whether the off days/Sundays, when the respondents have worked, need to be counted as extra days (over and above 30/31 days in a calendar month). The answer is No, for the simple reason, the respondents were paid for the work done on off days/Sundays. Double benefit, of wages and treating as extra day, can't be given. We clarify that while recomputing, the petitioner is only required to take into consideration the actual working days, the Sundays, Weekly Offs and National Holidays in a calendar month and nothing more.”

9. This being the opinion of the Division Bench we are of the opinion that there is no substance in the submissions of the petitioners because it has been emphatically held by the Division



Bench that since the workers were paid for the work done on off days/Sundays, the double benefit i.e. of wages and at the same time treating it as extra day(s) cannot be given. The argument of Counsel for the petitioners is that the said judgment of the Division Bench does not apply to their case because it has not taken into its consideration Sections 52 and 53 of the Factories Act, Rule 77 and relevant Form 9 of Delhi Factory Rules, 1950. The argument of the petitioners is that the respondent no.2 should have extended the benefit of weekly holidays as well as of compensatory holidays while calculating the number of working days.

10. The Central Administrative Tribunal has crystallized the issue in para 16 of the impugned order as under:

“.....whether the applicants are entitled to both the benefits of weekly holidays under Section 52 and compensatory holidays under Section 53 together or not, in peculiar facts and circumstances of the case?”

11. The Tribunal went through the relevant provisions and held that primary object of Section 52 is to provide weekly holiday i.e. Sunday for workers. If for any special reasons it becomes necessary to make Sunday a working day, a substitutional holiday is made compensatory under Section 53 of the Factories Act 1948. Therefore, the workder cannot claim both the benefits at the same time. The Tribunal was of the opinion that a conjoint and meaningful reading of the relevant provisions would lead to a conclusion that a worker cannot simultaneously claim weekly holidays (under Section 52) and compensatory



holiday (under Section 53) at the same time. The only legal requirement to count the actual working days is to add National and weekly holidays and nothing more. Therefore, it was held that the respondent no.2 i.e. Delhi Milk Scheme had calculated the working days correctly.

12. We have perused Section 52 and Section 53 of the Factories Act, 1948. The same are reproduced as under:

“52. Weekly holidays. —

(1) - No adult worker shall be required or allowed to work in a factory on the first day of the week (hereinafter referred to as the said day), unless—

(a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and

(b) the manager of the factory has, before the said day or the substituted day under clause (a), whichever is earlier,—

(i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

(3) Where, in accordance with the provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.



53. Compensatory holidays.—(1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.”

13. Section 52 simply provides that one weekly holiday would be provided to the workers. Section 53 makes a provision for not only granting a compensatory holiday in case a worker has to work on off day/Sunday but also provides a mechanism for ensuring it. In other words, if a factory allows a worker to work on such off day, a compensatory leave would be provided to him. However, it does not say that such compensatory leave would also be counted as a working day. Now we would like to reproduce Rule 77 of the Delhi Factory Rules, 1950 as under:

“77. COMPENSATORY HOLIDAYS –

- (1) *Except in the case of workers engaged in any work which for technical reasons must be carried on continuously throughout the day, the compensatory holidays to be allowed under sub-section (1) of Section 52 of the Act shall be so spaced that not more than two holidays are given in one week.*
- (2) *The Manager of the factory shall display, on or before the end of the month in which holidays are lost, a notice in respect of workers allowed compensatory holidays during the following month and of the dates therefore, at the place at which the notice of Periods of Works, prescribed under Section 61 is displayed. Any subsequent change in*



the notice in respect of any compensatory holiday shall be made not less than three days in advance of the date of that holiday.

- (3) *Any compensatory holiday or holidays to which a worker is entitled shall be given to him before he is discharged or dismissed and shall not be reckoned as part of any period of notice required to be given before discharge or dismissal.*
- (4) (a) *The manager shall maintain a Register in Form No.9: Provided that if the Chief Inspector of Factories is of the opinion that any muster roll or register maintained as part of the routine of factory or return made by the manager, gives in respect of any or all of the workers in the factory the particulars required for the enforcement of Section 52; he may, by order in writing, direct that such muster roll or register or return shall, to the corresponding extent be maintained in place of and be treated as the register or return required under this Rule for that factory.*
- (b) *The register maintained under Clause (a) shall be preserved for a period of three years after the last entry in it and shall be produced before the Inspector on demand."*

14. Rule 77 has been framed for setting the mandate of providing compensatory leave as contained in Section 53 of the Factories Act 1948, in action. Rule 77 (4) prescribes a Register in Form No. 9 to be maintained by the Manager of the factory for the purpose of enforcement of mandate of Section 52 and 53 of the Factories Act 1948. Learned Counsel for the petitioners has relied upon this Form in support of his contentions. We would like to reproduce Form No. 9 as under:



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DELHI FACTORY RULES

FORM No.9

(Prescribed under Rule 77)

Register of Compensatory Holidays

Serial No.	Number in the register	Name	Group of Relay No.	Name and date of	Year	Week Rest Days Lost due to the Exempting order in				Date of Compensatory Holidays Given in				Lost rest days carried to the next	Remarks
						January to March	April to June	to October December	July to September	January to March	April to June	July to September	to October December		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

15. Perusal of this Form No. 9 reflects that there are specific columns for Week Rest Days lost and Dates of Compensatory Holidays. The scheme of providing Compensatory Holidays as specified in Sections 52 and 53 of the Factories Act 1948 and Rule 77 read with Form No. 9 of the Delhi Factory Rules 1950 only provide a mechanism for ensuring Compensatory Holidays. None of these provisions contain any direction as to how 240 days would be calculated. Therefore, reference to above provisions of law and Form No. 9 by learned Counsel for the petitioners is of no benefit to them.

16. Now we come to the proviso to Rule 4 (iii) of the Standing Order, already reproduced above. It requires that for regularization, the 'Badli' workers should '**actually**' work for 240 days in a period of 12 months. By use of the word 'actually', the Standing Order has clearly excluded the Compensatory Holidays out of computation of the working days. As already



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opined that Central Administrative Tribunal has agreed with the respondent no.2 that if Compensatory Holidays are removed from consideration, none of the petitioners has completed 240 days in 12 months.

17. Accordingly, we are of the opinion that the impugned order is a reasoned and detailed exposition of law and it also follows a Division Bench judgment of this Court i.e. ***Shishpal*** (*supra*). Accordingly, we find no infirmity in the impugned order.

18. Accordingly, the petition is dismissed.

VINOD KUMAR, J

C. HARI SHANKAR, J

JULY 17, 2026

V/B