

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 07.10.2025

Pronounced on: 15.10.2025

Uploaded on: 15.10.2025

*Whether the operative part or full
judgment is pronounced: **Full***

CJ Court

WP(C) No.1081/2024

Gowhar Ahmad Kumar, aged: 41 years
S/o Ghulam Rasool Kumar
R/o Kandanwara, Kokernag, Anantnag.

...Petitioner(S)/Appellant(s)

Through: - Mr. Zahoor A. Shah, Advocate.

Vs.

1. UT of J&K through Principal Secretary to
Govt. Fores Department, Civil Secretariat,
Srinagar, **and four others.**

...RESPONDENT(S)

*Through: - Ms. Maha Majeed, Assisting Counsel, vice
Mr. Mohsin S. Qadiri, Sr. AAG.*

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

OSWAL 'J'

1) The petitioner had filed O.A No.121/2022 before the Central Administrative Tribunal, Srinagar (for short "the Tribunal"), for commanding the respondents to empanel him in the list of casual labourers whose wages were being paid under outsourcing head plan of Urban Forestry Department and regularly release the wages of the

petitioner under outsourcing head, created by the respondent-department (Government) for daily wagers and casual labourers and for directing the respondents to regularize the services of the petitioner from the date of his first appointment i.e. 07.02.2006 with all consequential benefits including the arrears of salary, arrears of pay revision, seniority and other service benefits.

2) The above mentioned reliefs were sought by the petitioner by asserting in his O.A that he came to be appointed as a casual worker with the respondents on 7th February, 2006 and was posed in North Jhelum Project, Budgam, under Prime Ministers Package, the project which was closed in the month of March, 2011. It was further averred in the application that from March, 2011 till December, 2012, he worked in Tangmarg Division of District Baramulla and when new project was started by the respondents under the name and title of “The Wullar Conservation Project”, the petitioner was transferred there on 12.02.2012 and he remained in the said project till September, 2016. In the month of October, 2016, the petitioner was sent to the Urban Forestry Division, Srinagar, and his wages were collected from the Central Scheme from 12.01.2012 to September, 2016. From October 2016, the petitioner was sent to the Firewood

Scheme Division controlled and managed by the Urban Forestry Division, Srinagar. It was stated by the petitioner that he continued to work with the respondents uninterruptedly, though his posting was changed from one project to another and at the time of filing of the petition, he was posted in Urban Forestry Division, Srinagar. He further claimed to have submitted an application for regularization of his services in the year 2019. While the petitioner was working in Urban Forestry Division, Srinagar, the respondents created outsourcing head in the year 2019-2020 but the petitioner was not empaneled in the list of employees available in the Firewood Scheme and his wages were being disbursed irregularly under different schemes resulting into apprehension that he may be excluded from the benefit of regularization of his services along with his batch mates.

3) The respondents objected to the claim of the petitioner by submitting that in terms of Government Order dated 17.03.2015 read with Circular dated 20.03.2015, complete ban has been imposed on engagement of casual/seasonal and need based workers in all Government Departments including State owned PSUs, as such, the petitioner cannot be enlisted under wage outsourcing head. The status of the petitioner as casual labour was denied by the

respondents by asserting that he had been working as need based worker purely on temporary basis and as per his own showing, the petitioner had worked till October, 2016.

4) The learned Tribunal, after hearing the parties, vide its order dated 12.03.2024, dismissed the O.A preferred by the appellant.

5) The petitioner has impugned the aforesaid order of the Tribunal on the grounds that he was appointed in the Forest Department by virtue of a valid order but the learned Tribunal has not considered the judgment of the Hon'ble Supreme Court in **Uma Devi's** case, which lays down that those employees having completed ten years of continuous service without any intervention of Court or stay order and the appointment is not illegal or irregular, must be accorded the benefit of regularization.

6) Mr. Zahoor A. shah, learned counsel for the petitioner, while reiterating the submissions made in the writ petition, has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Dharam Singh vs. State of UP**, 2025 INSC 998.

7) *Per contra*, Ms. Maha Majeed, learned counsel for the respondents, has argued that as per the own admission of

the petitioner, he was engaged for a particular scheme from time to time and was never engaged as a daily rated/casual worker against any substantive post, as such, the learned Tribunal has rightly dismissed the O. A. preferred by the petitioner.

8) Heard and perused the record.

9) In the averments made in the O.A, as narrated above, there is an admission on the part of the petitioner that he was initially engaged in North Jhelum Project, Budgam, under Prima Ministers package, the project closed in the year 2011. Thereafter, he remained in new project under the name of Wullar Conservation Project and worked there till September, 2016. The petitioner has not been able to demonstrate either before the learned Tribunal or before this Court that he was engaged as a daily rated worker/casual worker against any sanctioned post in the respondent department.

10) The Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi**, (2006) 4 SCC 1, has been held that if a person is not engaged against a sanctioned post in a regular establishment, he cannot make a claim of regularization. Further in the judgment in the case of **Dharam Singh** (supra), relied upon by learned

counsel for the petitioner, it has been observed by the Hon'ble Supreme Court as under:

17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.

18. Moreover, it must necessarily be noted that "ad-hocism" thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If "constraint" is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

11) In the judgment (supra), it has been held by the Hon'ble Apex Court that where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement

practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection.

12) So far as the present case is concerned, it is admitted case of the petitioner that he initially was engaged in North Jhelum Project Budgam and thereafter he worked in Wullar Conservation Project. The engagement of the petitioner was not against any sanctioned post and rather, he was engaged on temporary basis in different projects. The judgment relied upon by learned counsel for the petitioner cannot come to the rescue of the petitioner. It would be apt to take note of the judgment of the Hon'ble Supreme Court in **State of Gujarat & Ors. Vs. R. J. Pathan & Ors**, (2022) 5 SCC 394, wherein it has been observed as under:

5. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the respondents herein – original writ petitioners were, as such, appointed in a temporary project, which was created only for the purpose of rehabilitation pursuant to the earthquake for “Post-Earthquake Redevelopment Programme”. All of them were initially appointed for a period of eleven months on a fixed salary, which came to be continued from time to time till the requirement in a particular project/unit – “Project Implementation Unit”. However, as the said unit was required to be closed which, as such, was a temporary unit, instead of putting an end to the services of the respondents, the State Government thought it fit to transfer and place them with the Indian Red Cross Society. At this stage, the respondents approached the High Court and challenged

their placement with the Indian Red Cross Society. The learned Single Judge dismissed the said writ petition by observing as under:

“It is not in dispute that the petitioners, who are serving on a fixed term and salary as per the terms of the contract of service with respondent Nos. 1 & 2, are now transferred to respondent No.4 in view of administrative exigencies. Appointment of the petitioners is only for 11 months on a fixed salary which is continued from time to time and even the Unit on which the petitioners are appointed temporarily is a ‘Project Implementation Unit’ created only for the purpose of rehabilitation pursuant to the earth-quake for ‘post-earth-quake redevelopment programme’. Thus, the Unit itself has temporary status and tenure to which the petitioners are appointed on a fixed term and salary. If the decision is taken by the Authority to place their services with the Indian Red Cross Society continued with salary, it cannot be said that any service condition under the Rule is violated inasmuch as none of the petitioners is regularly appointed employee on any permanent sanctioned post on any establishment of the Government where the petitioners have any lien. Placement of the petitioners is neither violative of any statutory rule nor mala fide.”

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7. From the impugned judgment and order passed by the Division Bench of the High Court, it appears that what has weighed with the High Court was that the respondents were continued in service for a long time, i.e., seventeen years. However, the High Court has not considered that out of seventeen years, the respondents continued in service for ten years pursuant to the interim order passed by the High Court. Therefore, even considering the decision of this Court in the case of Umadevi (supra), the period for which the employees have continued in service pursuant to the interim order is to be excluded and not to be counted. The High Court has totally missed the aforesaid aspect.

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9. Even otherwise, it is to be noted that though not required, the State, instead of putting an end to the services of the respondents, graciously placed the respondents in the Indian Red Cross Society. No duty

was cast upon the State to transfer them to another establishment in a case where it is found that the employees are appointed in a temporary unit and on a temporary contractual basis and on a fixed term salary and on closure of the temporary unit, their services are not required. However, the State Government was gracious enough to place the respondents in the Indian Red Cross Society, which the respondents did not accept.

(emphasis added)

13) The judgment (supra) applies squarely in this case and after having gone through the judgment passed by the learned Tribunal, we do not find any illegality in the same, necessitating interference at our end.

14) In light of above, we do not find any merit in this writ petition. Resultantly, this writ petition is dismissed along with connected CM(s).

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
15.10.2025
“Bhat Altaf”

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	No