

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 17TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

WRIT APPEAL NO.100128/2025

BETWEEN:

1. THE CHIEF ADMINISTRATION,
BELGAUM INSTITUTE OF MEDICAL SCIENCES,
DR. B. R. AMBEDKAR ROAD,
SADASHIV NAGAR, BELAGAVI-590 019.
2. THE DIRECTOR,
BELGAUM INSTITUTE OF MEDICAL SCIENCES,
DR. B. R. AMBEDKAR ROAD,
SADASHIV NAGAR, BELAGAVI-590 019.
3. THE CHIEF FINANCE OFFICER,
BELGAUM INSTITUTE OF MEDICAL SCIENCES,
DR. B.R. AMBEDKAR ROAD,
SADASHIV NAGAR, BELAGAVI-590 019.

...APPELLANTS

(BY SRI. U.H. RAJAPUT, ADVOCATE)

AND:

1. ACHAYYA S/O NARAYAN BACHALKAR,
AGE: 40 YEARS, OCC: SERVICE,
R/O KHANAPUR RASTE QUARTERS,
CAMP, BELAGAVI-590001.
2. ANIL S/O MADHUSUDHAN GAOVAKAR,
AGE: 39 YEARS, OCC: SERVICE,
R/O SARAODAYA COLONY,
H.NO.6, HINDWADI, BELAGAVI-590011.
3. SANTOSH S/O SADASHIV SAVANT,
AGE: 45 YEARS, OCC: SERVICE,
R/O CTS NO.4833/36, AYODHYA NAGAR,
AMBEDKAR RASTE, BELAGAVI-590016.

4. KONDAYYA, S/O LAXMAYYA KONCHAM
AGE: 47 YEARS, OCC: SERVICE,
R/O PLOT NO.27, SAMBHAJI NAGAR,
GANESHPUR, BELAGAVI-590001.
5. SACHIN S/O SAHADEV KAMBLE,
AGE: 39 YEARS, OCC: SERVICE,
R/O AMBEDKAR GALLI,
BK KANGRALI, BELAGAVI-590010.
6. RAJU S/O IRAPPA MALAGI,
AGE. 45 YEARS, OCC: SERVICE,
R/O H.NO.323, YADDALAGUDD,
TAL: GOKAK, DIST: BELAGAVI-591307.
7. IRAYYA S/O CHANDRAYYA KAMBI,
AGE: 46 YEARS, OCC: SERVICE,
R/O KAMALAPUR JAMBAGE ONI, DHARWAD-580001.
8. SANTOSH S/O KRISHNA HOSAMANI,
AGE: 40 YEARS, OCC: SERVICE,
R/O TANAJI GALLI, BASAV COLONY,
DAIRI, 5TH CROSS, BELAGAVI-590010.
9. RAMESH S/O RAMSIDHA HONKALI,
AGE: 41 YEARS, OCC: SERVICE,
R/O KAIPANAL, TAL: GOKAK, DIST: BELAGAVI-591307.
10. SMT. MEENAKSHI W/O BISTTAPPA HANRIJAN,
AGE: 49 YEARS, OCC: SERVICE,
R/O INGALAGI GALLI, ARALIKATTI, BELAGAVI-591109.
11. SHEELA, W/O SANJAY KAMBLE,
AGE: 49 YEARS, OCC: SERVICE
R/O AMBEDKAR GALLI, BK KANGRALI, BELAGAVI-590010.
12. HAMEEDA W/O SHOUKATALI K.,
AGE: 60 YEARS, OCC: SERVICE,
R/O KHANJAR GALLI, BELAGAVI-590001.
13. RAZIYA W/O RIYAZ AHMED K.,
AGE: 39 YEARS, OCC: SERVICE,
R/O KOTWAL GALLI, BELAGAVI-590001.
14. AMINA W/O ISMAIL GHODEDURGA,
AGE. 50 YEARS, OCC: SERVICE,
R/O BHANDUR GALLI, BELAGAVI-590001.

15. MINAXI W/O CHIDANAND NAVI,
AGE: 43 YEARS, OCC: SERVICE,
R/O DEVARAJ ARAS COLONY, H.NO.8,
BASNDUR GALLI, ANGOL, BELAGAVI-590006.
16. KRISHNA, S/O LAXMAN TENGINKAR,
AGE: 33 YEARS, OCC: SERVICE,
R/O VENGURODA, TURAMARI, BELAGAVI-591128.
17. VENUGOPAL S/O RAGHVENDRA PUJAR,
AGE: 48 YEARS, OCC: SERVICE,
R/O SHESHAGIRI NILAY,
SHERI GALLI, BELAGAVI-590001.
18. VASANT S/O RAMAPPA GOUDAR,
AGE: 42 YEARS, OCC: SERVICE,
R/O H.NO.724, RAMNAGAR, 4TH ADDA,
KANGARI, K.H. BELAGAVI-590010.
19. KUMAR S/O KARLING KOLKAR,
AGE: 36 YEARS, OCC: SERVICE,
R/O KERIONI, HIREBAGEWADI, BELAGAVI-591109.
20. RENUKA W/O RAJU VAGANNAVAR,
AGE: 29 YEARS, OCC: SERVICE,
R/O A.P.M.C.ROAD, NEHRU NAGAR, BELAGAVI-590010.
21. ANAND S/O RAMSIDHA HONKALI,
AGE: 36 YEARS, OCC: SERVICE,
R/O H.NO.131, KAITANAL,
TAL: GOKAK, DIST: BELAGAVI-591307.
22. ASIF S/O QUTUBUDDIN MOKASHI,
AGE: 46 YEARS, OCC: SERVICE,
R/O MALI GALLI, BELAGAVI-591313.
23. BALVANT S/O SIDDRAI HIROJI,
AGE: 36 YEARS, OCC: SERVICE,
R/O PATIL GALLI, KANABARGI, BELAGAVI-590015.
24. RAJU S/O MALLAPPA KAMBLE,
AGE: 50 YEARS, OCC: SERVICE,
R/O NATHPAI CIRCLE, SHAHPUR,
BELAGAVI-590003.

25. SHANKAR S/O BALAPPA KEMPDINI
AGE: 33 YEARS, OCC: SERVICE,
R/O H.NO.4842/B34, SECOND CROSS,
BHOSLE BUILDING,
SADASHIV NAGAR, BELAGAVI-590019.
26. DEEPAK S/O JAYAWANT BASARIKATTI,
AGE: 44 YEARS, OCC: SERVICE,
R/O MAHADEV ROAD, KANGRALI KH, BELAGAVI-590010.
27. CHANNAMALLAYYA S/O RATHAYYA PUJAR,
AGE: 43 YEARS, OCC: SERVICE,
R/O LAXMI NAGAR, MACHHE, BELAGAVI-590014.
28. SIDDAPPA S/O KUMAR BAGI,
AGE: 45 YEARS, OCC: SERVICE,
R/O BEDEKIHALL FARM, ALLAKHANUR,
TAL: RAIBAG, DIST: BELAGAVI-591317.
29. RAJKUMAR S/O SHYAMUVEL JUNJANNAVAR,
AGE: 51 YEARS, OCC: SERVICE,
R/O KUKAWOLLI, AMBEDKAR GALLI,
TALUK & DIST: BELAGAVI-591113.
30. LAXMAN S/O KALLAPPA KAMBLE,
AGE: 50 YEARS, OCC: SERVICE,
R/O AMBEDKAR GALLI, BELAGAVI-591113.
31. BASAVARAJ S/O HANAMANTHAPPA BAGADI,
AGE: 34 YEARS, OCC: SERVICE,
R/O KALI AMBRAI, BELAGAVI-590001.
32. MAHANTESH S/O YAMANAPPA KAPARATII,
AGE: 34 YEARS, OCC: SERVICE,
R/O H.NO.743, AKKATANGERIHAL,
GOKAK, DIST: BELAGAVI-591307.
33. DEEPAK S/O SRIKANT PATIL
AGE: 35 YEARS, OCC: SERVICE,
R/O JAY BHAVANI NAGAR, AT KALKAMB,
POST. MUCHANDI,
TAL & DIST: BELAGAVI-590016.
34. RATNA D/O GANGARAM KAMBLE,
AGE: 42 YEARS, OCC: SERVICE,
R/O AMBEDKAR GALLI,
SULGA(HI) BELAGAVI-591108.

35. MANJUNATH S/O ARJUN DANDIGYAGOL,
AGE: 39 YEARS, OCC: SERVICE,
R/O ASHOK NAGAR, AL JI1, BELAGAVI-590016.
36. EKANAND S/O GUNDU KAMBLE,
AGE: 41 YEARS, OCC: SERVICE,
R/O AMBEDKAR GALLI, AGASAGE, BELAGAVI-591143.
37. RAVINDRA S/O MALLAPPA KAMBLE,
AGE: 45 YEARS, OCC: SERVICE,
R/O NATHPAI CIRCLE, SHAHPUR, BELAGAVI-590003.
38. VITTAL S/O NAGAPPA MACCHED,
AGE: 32 YEARS, OCC: SERVICE,
R/O MARIKATTI, BELAGAVI-591125.
39. SURESH S/O MALLAPPA HALANNAVAR,
AGE: 44 YEARS, OCC: SERVICE,
R/O RANI CHENNAMMA ROAD,
KAKATI, BELAGAVI-591113.
40. RADHA W/O SHRIDHAR KAMBLE,
AGE: 39 YEARS, OCC: SERVICE,
R/O H.NO.462, TEGGIN GALLI,
VADGAON, BELAGAVI-590005.
41. LAXMAN S/O VITTHAL KHOT
AGE: 35 YEARS, OCC: SERVICE,
R/O CHIKKODI RASTE, JODATTI, BELAGAVI-591222.
42. THE DIRECTOR, MEDICAL EDUCATION,
GOVERNMENT OF KARNATAKA,
ANANDRAO CIRCLE, BENGALURU-560 009.

... RESPONDENTS

(BY SRI. SANGRAM S. KULKARNI, ADVOCATE FOR R1 TO R41;
SRI. SHARAD V. MAGADUM, AGA FOR R42)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT 1961, PRAYING TO CALL FOR THE RECORDS PERTAINING TO WRIT PETITION NO.103797/2022 (S-RES) BEFORE THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT AND SET ASIDE THE ORDER DATED 24.12.2024 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WRIT PETITION NO.103797/2022 AND DISMISSE THE SAID W.P. BY ALLOWING THIS APPEAL & ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED ON 24.10.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **S.G. PANDIT J.**, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE S G PANDIT)

The instant appeal filed by respondents before the learned Single Judge under Section 4 of the Karnataka High Court Act, 1961 is directed against order dated 18.12.2024 in W.P.No.103797/2022, whereunder the writ petition is allowed with a direction to reinstate the petitioners and to regularize them, as they have rendered service for more than eight years, denying financial benefits with further observation that they would be entitled to payment of regular wages from the date of their reinstatement.

2. The parties to the writ appeal would be referred to as per their rank before the learned Single Judge.

3. Brief facts of the case are that, the petitioner Nos.1 to 14, 17, 21 to 23, 25, 39 to 41 were appointed on contract basis for a period of 11 months with a clause to renew if the services of the petitioners are satisfactory. Petitioner No.40 is the widow of Sri.Shridhar Kamble, who was also appointed in terms of order dated 02.07.2012, petitioner No.15 was appointed on 11.04.2012, petitioner No.16 was appointed on 06.05.2011, petitioner No.18 was appointed on 01.01.2014, petitioner No.19 was appointed on 17.11.2015, petitioner No.20 was appointed on 01.01.2016 and petitioner No.24 was appointed in the year 2015. It is to be noted here itself that the petitioners were appointed on contract basis and subsequently they were continued from time to time till their services were discontinued abruptly from 10.08.2021.

4. It is stated that, on 12.10.2021, petitioners made a written representation to the respondent Nos.2 to 4 requesting to consider the representation and to re-engage them on contractual basis, if not on permanent basis. As

the representation did not yield any result, the petitioners are said to have filed W.P.No.104572/2021 before this Court and the said petition was disposed of on 03.01.2022, directing the respondents to consider the representation of the petitioners and pass an appropriate order. By order dated 22.06.2022, the request of the petitioners to reinstate them on contract basis or to absorb/regularize their services was rejected. Questioning the said order of respondent Nos.2 to 4 and also with a prayer for a writ of mandamus directing the respondents to absorb the petitioners in Belagavi Institute of Medical Sciences (BIMS) against the sanctioned vacancies in Group-C and D posts petitioners preferred writ petition. Learned Single Judge under the impugned order directed reinstatement of the petitioners and to regularize them as they have rendered services for more than eight years, denying the financial benefits with an observation that they would be entitled for regular wages from the date on which they have been reinstated. Aggrieved by the same, respondent Nos.2 to 4 are in appeal.

5. Heard learned counsel Sri.U.H.Rajaput for appellants, learned counsel Sri.Sangram S. Kulkarni for respondent Nos.1 to 41 and learned Additional Government Advocate Sri.Sharad V. Magadum, for respondent No.42. Perused the entire writ appeal papers.

6. Learned counsel Sri.U.H.Rajaput for appellants/respondents would submit that the petitioners were initially appointed for a period of 11 months and thereafter they were not continued as Group-C and D employees by the respondents. However, their services were engaged by outsource agency. Therefore, he submits that as on the date of filing the writ petition, there was no master and servant relationship between the petitioners and respondents. He further submits that learned Single Judge committed an error in directing the regularization of services of the petitioners. It is submitted that as the petitioners were employees under the man power agency, they could not have sought any relief against the respondents. It is further submitted that some of the

petitioners are still serving as outsourced employees in BIMS.

7. Learned counsel for the appellants/respondents would further contend that even assuming that the petitioners were employees under BIMS, they have not put in continuous service of ten years as on the date of filing the writ petition to claim regularization. In that, learned counsel would place reliance on the decision of the Hon'ble Apex Court in the case of **SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMADEVI (3) AND OTHERS**¹. Further, learned counsel for the appellants/respondents would contend that regularization can be considered if the employee is in service and when the petitioners were discontinued, which is admitted by the petitioners, they could not have sought regularization and the learned Single Judge committed an error in directing regularization of petitioners who were not in service as on

¹ (2006) 4 SCC 1

the date of filing the writ petition. Thus, he would pray for allowing the writ petition.

8. Per contra, learned counsel Sri.Sangram S. Kulkarni for respondent Nos.1 to 41 would submit that the petitioners were initially appointed on contract basis and subsequently they were continued from time to time till August 2021, when they were discontinued from service. Learned counsel for the petitioners would submit that though the petitioners were engaged by the outsource agency, they were put into work in the respondent/Institution and they were continued to work in the sanctioned posts which they were initially appointed on contract basis in the year 2012. Learned counsel would submit that the method adopted by the respondents to get work from the petitioners through the outsource agency was only to avoid payment of salary attached to the post and to avoid regularization. It is further submitted that without the posts in which the petitioners were working, the respondent/Institution could not have carried out its day-to-

day administration. It is also contended by the learned counsel for the petitioners that services of the petitioners could not have been replaced by another set of ad-hoc employees or by getting employees through outsource agency. Thus, learned counsel would pray for dismissal of the writ appeal.

9. Having heard the learned counsel appearing for the parties and on perusal of the entire writ appeal papers, the points that would arise for our consideration are:

- a) Whether the petitioners have made out a case for regularization?
- b) Whether the order of the learned Single Judge under appeal warrants interference at the hands of this Court?

10. Answer to the above points would be in the negative and partly affirmative respectively for the following reasons:

The petition averments would indicate that the petitioners were initially appointed on contract basis by respondent Nos.2 and 3 for a period of 11 months with an option to renew under order dated 02.07.2012 (Annexure-A). Respondent Nos.2 and 3 in their statement of objections dated 21.03.2024 at paragraph (3) stated that the petitioners were engaged on contract basis for a period of 11 months from 02.07.2012 or until further orders. At paragraph (5) of the statement of objections, respondent Nos.2 and 3 have stated that respondents have not recruited the petitioners either by contract recruitment or otherwise and have only been engaging the services of the petitioners on outsourcing basis through the manpower agencies and manpower agencies are lending the persons as per the requirement of BIMS.

11. From the above statement of respondent Nos.2 and 3, it is clear that the petitioners were engaged initially by them on 02.07.2012 on contract basis for a period of 11 months and thereafter their services were continued

through outsource agency. It is also clear from the above statement that there was a need of the services of the petitioners in the BIMS and as such the services of the petitioners were utilized through the manpower agency. Though the salary of the petitioners was paid through manpower agency, the petitioners were carrying out the work of the BIMS. When the petitioners were initially appointed on contract basis by respondent Nos.2 and 3 and when for the work of the BIMS, the petitioners were continued through outsource agency, it cannot be said that there is no employer and employee relationship.

12. The Hon'ble apex Court in the case of **JAGGO VS. UNION OF INDIA**² in an identical circumstances has observed that the institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but

² (2024) SCC ONLINE SC 3826

also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

13. In the instant case also, though there is work and need of employees, instead of respondent Nos.2 and 3 employing the employees regularly, only to avoid certain legal obligations is resorting to employing through outsourcing.

14. Learned Single Judge at paragraphs (16) and (17) on noticing the governing council proceedings of BIMS dated 21.06.2013 has observed as follows:

"16. From the affidavit referred to above as well as the objections, it cannot be in dispute that the petitioners had been engaged under the order dated 02.07.2012 for a period of 11 months on contract basis. The BIMS has filed a Memo on 08.11.2024 along with certain documents which includes a resolution passed by the Governing Council of BIMS on 21.06.2013. In these proceedings held on 21.06.2013, the subject of dealing with all 171 employees who had been engaged on contractual basis for 11 months was taken up, and the resolution ultimately passed by the Governing Council in Subject No.15 reads as follows –

“ವಿಷಯ ಸಂಖ್ಯೆ: 15

ವಿವಿಧ ವರ್ಗಗಳ ಭೋಧಕೇತರ ಸಿಬ್ಬಂದಿ ಹಾಗೂ ‘ಡಿ’ ದರ್ಜೆ ನೌಕರರ (ಒಟ್ಟು ೧೭೧ ಸಿಬ್ಬಂದಿಗಳ) ಸೇವೆಯನ್ನು ಹೊರಗುತ್ತಿಗೆ ಆಧಾರದ ಮೇಲೆ ಪಡೆಯುವ ಕುರಿತು.

ಠರಾವು ಸಂಖ್ಯೆ : 15

ಬೆಳಗಾವಿ ವೈದ್ಯಕೀಯ ವಿಜ್ಞಾನ ಸಂಸ್ಥೆಯಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿರುವ 171 ಗುತ್ತಿಗೆ ಸಿಬ್ಬಂದಿಯವರ ಗುತ್ತಿಗೆ ಅವಧಿಯು ದಿನಾಂಕ 01.06.2013 ಕೊನೆಗೊಂಡಿದ್ದು, ಇವರ ಸೇವೆಯನ್ನು ಹೊರಗುತ್ತಿಗೆ ಟೆಂಡರ್ ಆಧಾರದ ಮೇಲೆ ಒದಗಿಸಿಕೊಳ್ಳಲು ನಿರ್ಧರಿಸಲಾಯಿತು, ಗುತ್ತಿಗೆ ಸಿಬ್ಬಂದಿಯವರು ಸದ್ಯಕ್ಕೆ ಪಡೆಯುತ್ತಿರುವ ಸಂಚಿತ ವೇತನದಲ್ಲಿ ಯಾವುದೇ ಕಡಿಮೆ ಆಗದಂತೆ ಗುತ್ತಿಗೆದಾರರಿಗೆ ಕೇವಲ ಸೇವಾ ಶುಲ್ಕ ಮಾತ್ರ ಪಾವತಿಸಲು, ಅವಶ್ಯಕತೆ ಅನುಗುಣವಾಗಿ ಈಗ ಆಹ್ವಾನಿಸಲಾದ ಟೆಂಡರ್‌ನಲ್ಲಿ ನಿಯಮಗಳನ್ವಯ ತಿದ್ದುಪಡೆ ಮಾಡುವಂತೆ ಚರ್ಚಿಸಲಾಯಿತು ಈ ವಿಷಯದಲ್ಲಿ ಬೆಳಗಾವಿ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಸಹಯೋಗದಿಂದ ಸದರಿ ವಿಷಯ ಇತ್ಯರ್ಥ ಪಡಿಸಲು ತೀರ್ಮಾನಿಸಲಾಯಿತು.

ಸದರಿ 171 ವಿವಿಧ ಹುದ್ದೆಗಳಿಗೆ ನೇಮಕಾತಿ ಕುರಿತು ಆರ್ಥಿಕ ಇಲಾಖೆಯ ಅನುಮೋದನೆ ಪಡೆದುಕೊಂಡು ಆದ್ಯತೆಯ ಮೇರೆಗೆ ನಿಯಮಾನುಸಾರ ಕ್ರಮ ಜರುಗಿಸಲು ವೈದ್ಯಕೀಯ ಶಿಕ್ಷಣ ನಿರ್ದೇಶಕರಿಗೆ ಸೂಚಿಸಲಾಯಿತು.

(ಕ್ರಮ-ನಿರ್ದೇಶಕರು ವೈದ್ಯಕೀಯ ಶಿಕ್ಷಣ)

ಎಲ್ಲ ವೈದ್ಯಕೀಯ ಮಹಾವಿದ್ಯಾಲಯಗಳಲ್ಲಿ ನೇಮಕಾತಿ ಕುರಿತು ಒಂದೇ ಪದ್ಧತಿ ಅನುಸರಿಸುವ ದೃಷ್ಟಿಯಿಂದ ಬೇರೆ ವೈದ್ಯಕೀಯ ಮಹಾವಿದ್ಯಾಲಯಗಳಲ್ಲಿ ಗುತ್ತಿಗೆ ಸಿಬ್ಬಂದಿಯವರ ಕುರಿತು ಯಾವ ಪದ್ಧತಿ ಅನುಸರಿಸಲಾಗದೆ ಎಂಬುದನ್ನು ಒಂದು ವಿವರವಾದ ವರದಿಯನ್ನು ಒದಗಿಸಲು ನಿರ್ದೇಶಕರು, ವೈದ್ಯಕೀಯ ಶಿಕ್ಷಣ, ಬೆಂಗಳೂರು ಇವರಿಗೆ ಸೂಚಿಸಲಾಯಿತು.

(ಕ್ರಮ-ನಿರ್ದೇಶಕರು ವೈದ್ಯಕೀಯ ಶಿಕ್ಷಣ, ಬೆಂಗಳೂರು)”

17. As could be seen from the above resolution, it is admitted that 171 Group 'D' employees had been engaged by BIMS on a contractual basis and it was specifically resolved that those employees whose term came to an end on 01.06.2013 i.e., after the expiry of 11 months, would be engaged through outsourcing agencies. It is therefore clear that the people who have been engaged on contractual basis for a period of 11 months were continued through an outsourcing agency. In other words, a contractual employee appointed initiation for 11 months in 2012 became an employee whose services were engaged through an outsourcing agency after the end of the contractual term."

15. Therefore from the above, there is no doubt that the petitioners were initially employed on contract basis by respondent Nos.2 and 3 and subsequently continued through the outsourcing agency, as there was a need for the services of the petitioners.

16. The writ petition averments in paragraph (8) would clearly indicate that the petitioners' services were discontinued abruptly on 10.08.2021 putting the petitioners and their family members to starving condition. Writ

petition was filed subsequently on 20.07.2022. It is settled position of law that one set of temporary employees cannot be replaced by another set of temporary employees. The Hon'ble Apex Court in the case of **MANISH GUPTA VS. JAN BHAGIDARI SAMITI**³ has reiterated the said principle that one set of ad-hoc employees cannot be replaced by another set of ad-hoc employees and can only be replaced by a permanent appointee.

17. Learned Single Judge has rightly placed reliance on the decision of **BHILWARA DUGDH UTPADAK SAHAKARI S. LTD., VS. VINOD KUMAR SHARMA (DEAD, BY L.RS.) AND OTHERS, (AIR 2011 SC 3546)** to reject the contention that there is no employer and employee relationship. It is to be noted that except for payment of salary by outsourcing agency, petitioners were controlled by respondent Nos.2 and 3/BIMS. The petitioners were working on the instructions of the officials of respondent Nos.2 and 3 and were reporting to the officials

³ (2022) 15 SCC 540

of respondent Nos.2 and 3 with regard to their duties and responsibilities.

18. Admittedly, as on the date of filing the writ petition, petitioners were not in service, they were discontinued on completion of eight years service. The petitioners were discontinued from service one year prior to filing of the writ petition. The Hon'ble Apex Court in the case of **UMADEVI (3)** (supra) at paragraph 53 has held as follows:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and

in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

The Hon'ble Apex Court in the above decision has directed the State Governments and their instrumentalities to take steps to regularize as one time measure the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further

ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up.

19. The **UMADEVI (3)** (supra) as discussed above makes it clear that regularization shall be done on completion of ten years or more in a duly sanctioned posts. In the case on hand, the continuation of petitioners for nearly eight years would mean that there was a need of services and the posts were available or sanctioned. However, the petitioners have not completed ten years as on the date of the filing the writ petition or as on this date, since the petitioners were discontinued from service from August, 2021.

20. In the above circumstances, we are of the considered view that the petitioners would not be entitled for regularization and the prayer of the petitioners for regularization is premature. Regularization of services could be considered if they fulfill the conditions laid down in paragraph 53 of **UMADEVI (3)** (supra) and if they are in service on temporary or daily wage or on contractual basis,

as on the date of seeking regularization. A person who is not in service either as a temporary, daily wage or contractual employment would not get a right to seek regularization unless he first seeks reinstatement and establishes the fulfillment of criteria prescribed under **UMADEVI (3)** (supra).

21. Learned Single Judge to the above extent directing regularization of the petitioners by placing reliance on the decision in the case of **TUMAKURU CITY CORPORATION VS. TUMKURU POURA KARMIKAR SANGHA**⁴ is misplaced, since in that case, the Pourakarmikas were working for nearly twenty years, whereas in the instant case the petitioners have served only for eight years and they were discontinued at that stage.

22. For the reasons recorded above, the following:

ORDER

a) Writ appeal is partly allowed.

⁴ 2022 KHC 41496

- b) The order dated 24.12.2024 in W.P.No.103797/2022 of the learned Single Judge insofar as directing regularization is set aside.
- c) The direction of the learned Single Judge to reinstate the petitioners by considering the settled position of law that as one set of ad-hoc employees cannot be replaced by another set of ad-hoc employees is confirmed.
- d) The respondents i.e., appellants herein shall comply the above within four weeks from uploading the order on the website of the High Court of Karnataka.
- e) It is open for the petitioners to seek for regularization of their services on their reinstatement and on establishing fulfillment of criteria prescribed under the **UMADEVI (3)** (supra) of rendering ten years of service.

**Sd/-
(S G PANDIT)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

NC.
CT-VP