



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

87 WRIT PETITION NO. 3077 OF 2023

CHIEF EXECUTIVE OFFICER

VERSUS

SATISH GYANOBA GAIKWAD

...

Mr. Satish S. Manale, Advocate for the Petitioner.

Mr. V. P. Golewar, Advocate for the Respondent.

...

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 4th MARCH 2026

PC.:-

1. Heard learned Advocates for the respective parties.
2. By the present petition, the Petitioner is aggrieved by the order dated 12.08.2022, passed by the learned Industrial Court Maharashtra (Latur Bench, Latur) in Complaint (ULP) No.17 of 2014, whereby the learned Industrial Court allowed the complaint filed by the Respondent-Employee.
3. Mr. Satish S. Manale, learned Advocate for the Petitioner submits that Respondent herein filed a complaint of Unfair Labour Practice by stating that he was appointed as a Watchman on daily wages from 06.09.1990 and when he demanded wages, he was not allowed to sign the muster role and, therefore, he filed I.D.A. No.13 of 1998. He also filed a Complaint (ULP) No.39 of 1999 and the said complaint was allowed and the order passed by the Labour Court was

confirmed by the Hon'ble Apex Court in complaint. He contended that since 1990, he has worked for more than 240 days in the year and is entitled for permanency/regularisation.

Pursuant to the notices, the Petitioner filed a written statement and submitted that Respondent was appointed on a temporary basis, the post on which the Respondent was appointed is not a sanctioned post. The appointment is not made after following the selection procedure under the Zilla Parishad Service Rules and the appointment was issued by the concern authority without there being any sanctioned post. He further submits that the Integrated Child Development Project Scheme (ICDPS) is sponsored by the Central Government and there are specific instructions that in case, office of the Chief Development Project Officer (for short "CDPO") is situated in a Panchayat Samiti, no appointment of the Watchman is necessitated as the post of Watchman is not available and approved for the office of CDPO.

4. He further submits that the learned Industrial Court without considering the fact that Respondent was not appointed by the CEO, ZP, rather he was appointed under the ICDPS scheme, by the CDPO, therefore, the learned Industrial Court has committed error while allowing the complaint.

5. Per contra, Mr. V. P. Golewar, learned Advocate for the Respondent-Employee invited my attention to the appointment order issued by the Chief Executive Officer dated 07.08.1991, whereby it is clear that the Petitioner was initially appointed as a Watchman under the CDPS scheme from 02.08.1991 and 31.08.1991 by the Chief Executive Officer, Latur and thereafter, he was continued by the Chief Executive Officer from time to time.

6. He further submits that the other similarly situated employees, who were appointed under the scheme by Chief Executive Officer himself, their services were regularised and, therefore, he submits that the learned Industrial Court rightly allowed the complaint and prayed to dismiss the writ petition.

7. The Hon'ble Apex Court in the case of **Pandurang Sitaram Jadhav and others Vs. State of Maharashtra Through its Dairy Manager and another**, reported in [(2020) 17 SCC 393] observed in paragraphs 12, 13 and 14 as under:

"12. In view of the aforesaid facts as also the legal pronouncements made subsequently, we have no doubt that these appellants before us would be entitled to the benefit of regularisation and mere delay in preferring the claim would not come in their way except that the benefit of regularisation would arise from the date the complaints were filed.

13. The finding of an unfair labour practice by the Tribunal has in fact been confirmed by the learned Single Judge in the present case and the only two reasons for interference

by the Division Bench relating to Umadevi (3) case have already been explained in the aforesaid subsequent judgments.

14. We thus, direct the respondents to regularise the appellants accordingly and the necessary orders be issued within three months from the date of the order. The benefits which the appellants would be entitled to should also be remitted to the appellants within the same period from the date of the complaints, though the earlier period would be counted for the purpose of calculation of benefits without the appellants being monetarily entitled for that period."

8. The Hon'ble Apex Court further in the case of **Shripal and another Vs. Nagar Nigam, Ghaziabad**, reported in (2025 SCC OnLine SC 221) has observed in paragraphs 16, 17 and 18 as under:

"16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.

18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future dally-wage

engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen In their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this Judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.

III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are require the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory equitable norms".

9. Further, the Hon'ble Apex Court in the matter of ***Dharam Singh and others Vs. State of U.P and Another***, reported in (2025 SCC Online 1735) observed in paragraph 17 to 20, 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 establishment registers, muster rolls and outsourcing keep and produce accurate 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 is not consequences of prolonged insecurity sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

19. Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the material Indicating vacancies and comparator regularisations, we issue the following directions:

- i. **Regularization and creation of Supernumerary posts:** All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create the or supernumerary posts in corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or*

equivalent) without any caveats preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.

ii. Financial consequences and arrears: Each appellant shall be paid as arrears the full difference between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization/retirement/death, as the case may be. Amounts already paid under previous interim directions shall be so adjusted. The net arrears shall be released within three months and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.

iii. Retired appellants: Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgment.

iv. Deceased appellants: In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the arrears under clause (ii) up to the date of death, together with all terminal/retiral dues recalculated consistently with clause (1), within three months of this Judgment.

v. Compliance affidavit: The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary of the U.P. Education Services Selection Commission or the

prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgment.

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling "reconsiderations," and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India".

10. The Hon'ble Apex Court in the matter of ***Jaggo vs. Union of India and Others***, reported in ***2024 SCC OnLine SC 3826***, has also observed in paragraphs 9, 20 and 26 as under:

"9. On the other hand, the following primary arguments have been advanced before us on behalf of the Respondents:

(i).....

(ii) Absence of Sanctioned Posts: They assert that the appellants were not appointed against any sanctioned posts. According to the respondents, without sanctioned vacancies, there can be no question of regularization or absorption into the permanent workforce.

(iii).....

(iv).....

(v).....

(vi).....

20..... The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in *Vinod Kumar v. Union of India*, (2024) 1 SCR 1230, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

"6. The application of the judgment in *Uma Devi* (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of *Uma Devi* (supra).

7. The judgment in the case *Uma Devi* (supra) also distinguished between "irregular" and "illegal" appointments underscoring the

importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case..."

26. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the Judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades."

11. The Hon'ble Apex Court in the case of ***Bhola Nath Vs. State of Jharkhand & Ors., reported in 2026 INSC 99*** , has held in paragraph Nos.13.10 and 14, which read as under:-

"13.10. In the aforesaid backdrop, we are unable to persuade ourselves to accept the respondent-State's contention that the mere contractual nomenclature of the appellants' engagement denudes them of constitutional protection. The State, having availed of the appellants' services on sanctioned posts for over a decade pursuant to a due process of selection and having consistently acknowledged their satisfactory performance, cannot, in the absence of cogent reasons or a speaking decision, abruptly discontinue such engagement by taking refuge behind formal contractual clauses. Such action is manifestly arbitrary, inconsistent with the obligation of the State to act as a model employer, and fails to withstand scrutiny under Article 14 of the Constitution.

FINAL CONCLUSION:

14. In light of our discussion, in the foregoing paragraphs, we

summarize our conclusions as follows:

- I. The respondent-State was not justified in continuing the appellants on sanctioned vacant posts for over a decade under the nomenclature of contractual engagement and thereafter denying them consideration for regularization.*
- II. Abrupt discontinuance of such long-standing engagement solely on the basis of contractual nomenclature, without either recording cogent reasons or passing a speaking order, is manifestly arbitrary and violative of Article 14 of the Constitution.*
- III. Contractual stipulations purporting to bar claims for regularization cannot override constitutional guarantees. Acceptance of contractual terms does not amount to waiver of fundamental rights, and contractual stipulations cannot immunize arbitrary State action from constitutional scrutiny.*
- IV. The State, as a model employer, cannot rely on contractual labels or mechanical application of Umadevi (supra) to justify prolonged ad-hocism or to discard long-serving employees in a manner inconsistent with fairness, dignity and constitutional governance.*
- V. In view of the foregoing discussion, we direct the respondent-State to forthwith regularize the services of all the appellants against the sanctioned posts to which they were initially appointed. The appellants shall be entitled to all consequential service benefits accruing from the date of this judgment.”*

12. In the above judgments, the Hon'ble Apex Court has considered the issue of regularization and held that if the daily wage employee has worked for years together and subsequently, not given benefit of permanency then it amounts to unfair labour practices. The Respondent/Employee has proved before the learned Industrial Court that he has completed 240 days of continuous service in one calendar year and therefore, the Industrial Court has rightly granted permanency in his favour.

13. Having heard learned Advocates for the respective parties

and after going through the order passed by the learned Industrial Court. There is no dispute about the fact that the Chief Executive Officer appointed Respondent No.1 vide its order dated 07.08.1991. This Court while considering the Writ Petition No.2946 of 2012, recorded finding and dismissed the writ petition and the said order was challenged by the Petitioner by filing Letter Patent's Appeal No.19 of 2013 and the division bench of this Court, recorded the findings in paragraph Nos.7 to 12, which read as under:-

"7. Being aggrieved by the said judgment and order of the Labour Court, Latur, the appellant herein preferred Revision (ULP) No.9/2011 before the Industrial Court at Latur. The said revision petition came to be dismissed with reasons vide judgment and order of the revisional Court dated 29.11.2011. Even before the Industrial Court, Latur, the appellant herein did not raise any ground pertaining to the said workman having-been, allegedly, illegally appointed, specific procedure for recruitment having not been followed, or that the Project on which he was engaged as a Watchman has come to an end. The record and proceedings from the Court below were called for and considered by the revisional Court.

8. The appellant raised an issue that the judgment in the case of Secretary, State of Karnataka and Others v Umadevi and Others [(2006) 4 SCC 11, precludes the Labour Court from considering claims of regularization or permanency against an employer falling within the definition "State" under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The revisional Court considered the said judgment and, based on the view of the Hon'ble Supreme Court expressed in MSRTC Vs. Casteribe Rajya P.Karmachari Sanghatana (2009 III) CLR 262, concluded that the powers of the Industrial Court and Labour Courts are not denuded by the Umadevi's judgment. It is equally noteworthy that the claim of the workman was not for regularization or permanency, but was challenge his oral termination from employment in violation of the provisions of the Industrial Disputes Act, 1947.

9. The appellant herein preferred Writ Petition No.2946/2012 before the learned Single Judge of this Court for challenging the judgment and order dated 20.1.2011 delivered by the Labour Court, Latur, and the judgment and order of the Industrial Court, Latur, dated 29.11.2011. Even in the writ petition, the appellant did not raise an issue as to whether the workman was illegally appointed, or was engaged without of the following the due procedure of law, or that the project work had come to an end. Nevertheless, it had been proved before the Labour Court, Latur, through the cross examination appellant's witness, that the said Project is continued through the Zilla Parishad, and it has not come to an end. The learned Single Judge vide an order dated 22.11.2012, dismissed the writ petition after hearing the parties. It is this order passed by the learned Single Judge that has been assailed in this Letters Patent Appeal.

10. We have heard the learned counsel for the petitioner. To a specific query put to him as to whether the appellant had, at any point of time, raised an issue as regards the engagement of the workman in violation of a specific procedure be followed for appointing Watchman, the learned Counsel, upon going through the appellant's written statement filed in the Labour Court, Latur, failed to point out a single sentence of pleading on this issue.

Another query was put to him as to whether the appellant had taken a plea that the Project on which the workman was engaged as a Watchman had come to an end, so as to attract Section 2(00) (bb) of the Industrial Disputes Act, 1947, the learned Counsel, once again, went through the said written statement, and failed to point out any pleading touching this issue.

11. We are conscious of the fact that the Scheme, on which the workman was engaged as a Watchman was proved to have been in continuation by the Central Government through the zilla Parishad. So also, the learned Counsel did not contend before us that the said Scheme has ended.. In fact, it is not the case of the Appellant that the Scheme has come to an end. As such, we are unable invoke Section 2(oo) (bb) Industrial Disputes Act, 1947 since the said exception to the definition of retrenchment would be applicable only if the project work comes to an end and the services of the workman are no longer required.

12. It has been one of the grounds in the appeal raised by the appellant that there was delay in filing the complaint, which ground was neither pleaded nor proved before the Labour Court and Industrial Court. We also put specific query to the learned

Counsel for the appellant as to how would he explain the minor /artificial breaks of one day or two days created the appellant each termination and subsequent appointment of the workman. We found that the learned Counsel merely harped on the fact of a break in service by a day or two; but, could not establish as to whether it was a by in justifiable break. Needless to state, we find such breaks to have been introduced by the appellant in order to truncate the rights of the said workman and prevent him from completing 240 days in the continuous employment no of the hesitation in employer. We, therefore, have disregarding these artificial breaks created by the appellant. The learned Counsel for the appellant failed to point out any perversity in the order of the learned Single Judge so as to convince us to cause an interference with the said order of the learned Single Judge.”

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15. I have also gone through the evidence led by both the parties and more particularly after going through the appointment order, which was issued by the Chief Executive Officer, Latur, I find that there is no dispute about the fact that the Petitioner was working on daily wages for years together i.e. from 06.09.1990.

16. Considering the law laid down by the Hon'ble Apex Court in the above cited cases, I am not inclined to entertain the present petition. Hence I proceed to pass following order :

ORDER

- (i) The Writ Petition is dismissed.
- (ii) No order as to cost.

(SIDDHESHWAR S. THOMBRE, J.)