

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7671 of 2021

=====

Syed Abdul Moin son of late Abdus Samad Resident of- Mazar Shah Dargahi Sb. Pakkabag, PS- Ganj, District- Rampur (U.P.) At present residing at G-1 Irshad Blok, 363 Mustafa Compound 3-J New Patliputra Colony, PS- Patliputra, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Education Department Government of Bihar, Patna.
2. The Principal Secretary Finance Department Government of Bihar, Patna.
3. The Director Administration, Government of Bihar.
4. The Director State Council of Research and Training Mahendru.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Asif Kalim, Advocate Mr. Majid Mahboob Khan, Advocate
For the Respondent/s	:	Mr. Gautam Kr. Yadav, GP 26

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 22-04-2025

Heard Mr. Asif Kalim along with Mr.Majid Mahboob Khan, learned counsels appearing on behalf of the petitioner and Mr. Gautam Kr. Yadav, learned GP 26 for the State.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

“(a) For issuance of a writ in the nature of mandamus direction the respondent to treat the petitioner as permanent employee or regularise the service w.e.f.10.6.1993 and pay post retiral benefits i.e. pension Gratuity and leave encashment.

(b) For issuance of a writ directing the respondent to produce the service file of the petitioner name file no.2/M10-127112 before this



Hon'ble court for better appreciation of the case and for proper adjudication.

(c) For issuance of any other writ/writs, command/commands, direction/directions as your lordship may deem fit and proper in the facts and circumstances of the case."

3. Learned counsel appearing on behalf of the petitioner submitted that pursuant to the advertisement for appointment on deputation as principal for District Institute of Education and Training (DIET), the petitioner applied and he was selected for the said post. The engagement of the petitioner was approved by the State Government and a letter has been issued by the Additional Secretary, Education Department, Government of Bihar *vide* memo No.186 dated 05.05.1993 (Annexure 1). Petitioner was issued appointment for three years as per policy decision of the State Government for implementation and appraisal of programmes and undertaking activities for quality improvement in school education and teacher education. The petitioner gave his joining at DIET Gaya on 10.06.1993. Time to time service of the petitioner was extended till 31.05.2006 by different orders issued by the respondent State and lastly *vide* order dated 31.05.2006. Accordingly, office of the Accountant General issued pay slip in favour of the petitioner from very inception at part with



regular employee, on the request made by the department. He continued as principal of DIET till the year 2006 and thereafter the petitioner being treated as officer of Bihar Education Service, was transferred/promoted vide order dated 18.06.2006 as Head of Department of State Council of Education Research and Training (SCERT) Mahendru, Patna where he continued till his superannuation i.e, 31.07.2017. The petitioner on the said basis has claimed his regularization and payment of pension and other retiral benefits applicable to the State employees, which has not been given to the petitioner.

4. On these backgrounds, learned counsel submitted that petitioner qualified for pension and the same has to be fixed by the State Government, as per Rules 58 and 59 of the Bihar Pension Rules, 1950, which deals with the condition of service of a Government servant to qualify for pension. The same is reproduced hereinafter:

“58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-

First- The service must be under Government.

Second The employment must be substantive and permanent.

Third - The service must be paid by Government.

These three conditions are fully explained in the following sub- sections.

59. The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled-

(1) declare that any specified kind of service



rendered in a non- gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.”

5. *Per contra*, learned counsel appearing on behalf of the State submitted that it is admitted position that on 12.09.1992, an advertisement was published in Times of India by Directorate of Research and Training, DRT. The petitioner having been selected was deputed as principal DIET Gaya for a period of three years *vide* department notification contained in Memo No.186 dated 05.05.1993. Thereafter, the petitioner was relieved from Nalva Lovely Public School, Panipat, Haryana and gave his joining as principal DIET Gaya on 10.06.1993 and remained there till 30.06.2006. The petitioner was then transferred to SCERT, Patna through departmental notification no.1105 dated 18.06.2006 where he served as Head of Department till 31.07.2017. In these backgrounds, learned counsel submitted that petitioner having not ventilated his grievance before the appropriate authority, the present writ petition, which has been filed hurriedly, is not maintainable in accordance with law. However, he submitted that the Director, Administration-cum-Joint Secretary, Human Resource Department, Bihar is the controlling officer of the petitioner



and, as such, it would be appropriate that petitioner may ventilate his grievance before him.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties, as well as, the information contained in counter affidavit and supplementary counter affidavit, I find that the petitioner continued to serve his duty from the date of his initial appointment by the State Government from 10.06.1993 till his date of retirement in the year 2017 while functioning as Head of Department of SCERT, Patna. The provision of Rules 58 and 59 can be taken while deciding the present case of the petitioner which provides condition of service of a Government servant to qualify for pension. Further, in respect of grievance of the petitioner and the relief prayed for in the present writ petition, I find it apt to take notice of the recent law laid down by the Hon'ble Supreme Court in the case of ***Jaggo Vs. Union of India & Ors. (SLP (C) No. 5580 of 2024)***, relying on its judgment passed in ***Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.***, reported in ***(2024) 1 S.C.R. 1230*** has made following observations in Paragraph Nos. 20, 21, 22, 23, 25 and 27, which are reproduced hereinafter:

“20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and



necessary functions of the State or its instrumentalities. 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 judgement of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.[2024] 1 S.C.R. 1230, it was held that 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 judgement 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...”

21. The High Court placed undue emphasis on the initial label of the appellants’ engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing



regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- **Misuse of "Temporary" Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual, even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*
- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*



- **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.
- **Using Outsourcing as a Shield:** 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 also demonstrates a deliberate effort to bypass the obligation to offer regular employment.
- **Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

8. Further the Hon’ble Supreme Court has recently reiterated the same in the case of ***Shripal & Anr. vs. Nagar Nigam, Ghaziabad (Civil Appeal Nos. 8158-8179 of 2024)***, wherein in paragraphs no. 14 and 15, the Apex Court has held as follows:



"14. The Respondent Employer places reliance on Umadevi (supra) to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular;" the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgement of this court in Jaggo v. Union of India."

9. In above view of the matter and admitted fact, I find that petitioner has continuously worked on different post and on the date of retirement, he was holding the post of Head of Department, SCERT and, as such, he is entitled for due pension and other benefit payable to the State Government employee in light of Rules 58 and 59 of the Bihar Pension



Rules, 1950 as denial to that respect has not been made by the State Government, who is the appointing authority of the petitioner.

10. The present writ petition is, accordingly, disposed of.

11. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2025
Transmission Date	NA

