

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5925 of 2020

1. Sunil Kumar Tiwari Son of Late Ramesh Tiwari, Resident of at and P.O.-Gaugia, District-Gopalganj.
2. Vedant Pandey, Son of Late Gorakhnath Pandey, Resident of Village and P.O. Simrahi, District-Gopalganj.
3. Madan Mohan Pandey, Son of Late Jagdish Pandey, resident of at and P.O.-Thakraha, District-West Champaran.
4. Vijay Bahadur Mishra, Son of Late Vishwanath Mishra, Resident of Andheya, P.O.-Karmayani Premwadi, District-Deoria (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Human Resources Development, Government of Bihar, Patna.
2. The J.P. University, Chapra through its Registrar, Chapra.
3. The Vice Chancellor, J.P. University, Chapra.
4. The Registrar, J.P. University, Chapra.
5. The Principle, Gopalganj College, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Janardan Prasad Singh, Advocate Mr. Dipak Kumar, Advocate
For the State	:	Mr. Madanjeet Kumar (Gp20)
For the University	:	Mr. Manoj Kumar Singh, Advocate Mr. Bindhyachal Rai, Advocate Mr. Chandan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 05-03-2025

Heard Mr. Janardan Prasad Singh, learned counsel
along with Mr. Dipak Kumar, learned counsel appearing on
behalf of the petitioner; Mr. Madanjeet Kumar, learned GP 20
for the State and Mr. Manoj Kumar Singh, along with Mr.
Bindhyachal Rai and Mr. Chandan Kumar, learned



counsels for the University.

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

(i) For issuance an appropriate writ of Mandamus commanding the respondents to regularize/absorb the services of the petitioners in different Class III post in the light of the agreement entered in to between the Bihar State University and the College Employees Federation and the State Government dated 26.4.1989.

(ii) For issuance an appropriate directions commanding the respondents to create and sanction class III post in the college on the basis of the staffing pattern for the purpose of regularization/absorption of the services of the petitioners

(iii) To issue a writ of mandamus commanding the respondents to grant the prescribed pay scale to the petitioners, which is admissible to the similarly situated employees with effect from 1.4.1981 and further commanding the respondents to pay the arrears of salary as well as the current salary admissible to the petitioners with effect from 1.1.1989 in the light of the agreement (as contained in Annexure-4).

(iv) For grant of any other relief or reliefs to which the petitioner's are found entitled too."

3. Brief facts of the case are that the petitioners were appointed between 1982 to 1986 on different posts in Gopalganj College, Gopalganj within the staffing pattern and the same was approved by Registrar, Bihar University vide letter dated 12.08.1984. On 26.04.1989, an agreement was entered into



between the State Government and the Bihar State University and College Employees Federation, wherein it was agreed that in view of letter dated 25.02.1987, issued by the State Government, non-teaching employees of the University and the College will be given the same benefit, which has been given to the employees of the State Government. It was also agreed, *inter alia*, that appointment of non-teaching employees made on different posts after 15.08.1976 on the basis of staffing pattern be created and approved with retrospective effect and payment of salary to such employees shall also be made. It was also agreed that only the persons appointed on these posts will be regularized after screening on the basis of seniority and no fresh appointment shall be made. The State Government also agreed to make payment of salary of the non-teaching employees working in constituent college of the University with effect from 01.04.1981, like the employees of the State Government on the condition that no arrears of salary will be given to the employees up to 31.12.1988. After the agreement was entered into between the State Government and the Bihar State University and College employees Federation, steps for screening of the employees appointed under the staffing pattern in Gopalganj College, Gopalganj was taken up by the then Bihar University



and in connection with that the Bihar University *vide* its letters dated 19.07.1989 and 27.07.1989 called for a list of Class-III and IV employees appointed under the staffing pattern in Gopalganj College, Gopalganj from the Principal of the College. The Principal of the College *vide* its letter no. P/504 dated 03.09.1989 submitted a list of class III employees appointed under staffing pattern in the college, as required by the University. In the list submitted by the Principal, in a form of a chart, name of petitioners, qualification, date of birth, post on which they were appointed, name of the appointing authority and date of joining and period of service etc. have also been mentioned. The aforementioned chart was forwarded by the Principal of the College to the University through forwarding letter no. P/504 dated 03.09.1989.

4. Thereafter, the State Government came out with a resolution contained in Memo No.989 dated 10.05.1991, whereby it was resolved to create posts in the college and the University on the basis of staffing pattern. By the said resolution, it was also decided that employees, who have been appointed up to 10.05.1986 on the staffing pattern, shall only be absorbed/adjusted. It was further decided by the said resolution that persons, who were working prior to 10.05.1986, if not



appointed on the post on the basis of staffing pattern, will be allowed to continue in service and they will be adjusted against the post falling vacant in future and the adjustment against the post approved under the staffing pattern, may be made by the University after discussion with the Unions and in case of any dispute, the final decision will be taken by the state Government which will be binding on the parties.

5. Due to inaction or personal reason of the authority concerned, the petitioners who were appointed prior to 10.05.1986 are not being paid their salary in prescribed pay scale according to staffing pattern in light of resolution dated 10.05.1991 and at the same time, their services have not been regularized. Aggrieved by the said inaction on part of the respondents, the petitioners have been forced to file the present writ petition.

6. Learned Senior counsel appearing on behalf of petitioners submitted that the issue involved in the present writ petition is no more *res integra*. One similarly situated employee Ashok Kumar had filed CWJC No.882 of 1998 which was heard along with CWJC No.834 of 1999, which was filed by another similarly situated Class III employees, Harendra Prasad Yadav and others. This Court taking into consideration the



backgrounds of the case had dealt with brief history of two cases in different paragraphs and from perusal of paragraph no.5, it would appear that all the petitioners were appointed on Class III and Class IV post on their respective dates between 1977 to 1982. Petitioners have claimed in the present case that they were appointed before the said period and the same has been provided in tabular chart (Annexure-1 series to the writ petition). He further submitted that in the counter affidavit, similar pleading has been stated which was argued in the aforesaid writ petitions, upon which, the Coordinate Bench of this Court has taken detailed note of the argument recorded on behalf of the University and the State in paragraph no.7 to 13. The petitioners' counsel further submitted that the petitioners adopts the argument which has been recorded in paragraph nos.14 to 18 of the said judgment. In this background, learned counsel submitted that the petitioners also seek similar relief as has been granted to the petitioners of CWJC No.882 of 1998 and another analogous case. He further submitted that the Jai Prakash University, after it was bifurcated from the Babasaheb Bhimrao Ambedkar University has preferred LPA No.855 of 2000 and LPA No.856 of 2000 against the judgment and order dated 19.05.2000 passed in the aforesaid two writ petitions. The



Division Bench in the peculiar facts and circumstances of the case, have observed that all the appointments, which were made between 1977 to 1983 and those teachers were working has made following observation in the said order:-

“In our view, since all such appointments were made between 1977 to 1983, it would not be proper to interfere with the impugned order simply on the ground that posts were not advertised at different places. Because admittedly all these respondents have been working continuously for 18-23 years. This is not the case of the appellant- University that such respondents were not qualified for such appointments. We, therefore, taking into consideration all the facts noticed above, find no merit in these appeals and they are accordingly dismissed.”

The Division Bench was pleased to dismiss the LPA preferred by the University.

7. The University then filed Civil Appeal No.7125 of 2000 and Civil Appeal No.7126 of 2000 before the Apex Court. Both the appeals were heard together and same were dismissed by the order dated 20.08.2001.

8. Before I proceed to record the argument forwarded on behalf of the respondent University, I must show my displeasure, the manner in which one counsel appears and the other counsel jumps upon to seek time on the basis of non-availability of counsel who was allotted the brief. The case was heard consequently for three days in presence of Mr. Manoj Kumar Singh and today Mr. Bindhyachal Rai seeks time on behalf of the University. Comprehensive counter affidavits have



been filed on behalf of the State and University. Following paragraphs would be necessary for adjudication of this writ petition:

“6. That Section 35 of the Bihar State Universities Act, 1976 provides that: "35. No post for appointment shall be created without the prior sanction of the State Government. Notwithstanding anything contained in this Act, no University or any College affiliated to such a University, except such College

(a) as is established, maintained or governed by the State Government: or

(b) as is established by a religious or linguistic minority;

(i) After the commencement of this Act no teaching or non-teaching involving liabilities shall be created without the prior approval of the State Government.

(ii) Shall either increase the pay or allowance attached to any post, or sanction any new allowance;

Provided that the State Government may, by an order, revise the pay scale attached to such post or sanction any new allowances.

(iii) Shall sanction any special pay or allowance or other of any kind including ex-gratia payment or any other benefits having financial implication any person holding a teaching or non-teaching post;

(iv) Shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

Notwithstanding anything contained in this Act, no College other than one mentioned in clauses (a) and of (b) of sub-section (1), shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government.

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by a candidate possessing the prescribed qualification was made made on the basis of interview by the selection committee after publication vacancy of the vacancy in the Newspaper.

After appointment whether the employee is continuing in service. This aspect is to be verified by examining the attendance register and payment register.

Report is to be sent by university in the format attached to the said letter.

7. That it is important to mention here that in view of letter of the State Government dated 17.11.1998 the final decision regarding regularization of non-teaching employees under the staffing pattern is to be taken by the State Government, if the University recommends the case of such employee in terms of the letter of the State Govt. dated 17.11.1998.

9. That in view of Judgment passed by Hon'ble Apex Court in case of Uma Devi and Judgment passed by Hon'ble Court in Ram Sewak Yadav case reported in 2013 (1) PUR 964, the service of the petitioner cannot be regularized. In Para 43 of the said judgment this Hon'ble Court has held as follows:-

(a) Uma Devi (supra) prohibits regularization of daily wages, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(b) An illegal appointment void abinitio made



contrary to the mandate of Article 14 without open competitive selection cannot be regularized under circumstances.

(c) Irregular appointment can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(d) The appointment must not have been an individual favour doled out to the appointee alone and the person must have Any appointment or promotion made contrary to the provisions of this Act, or Statues, Rules or Regulations made there under or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall realized from the officer making such appointment or promotion as a public demand under the provisions of the Public Demands Recovery Act, 1914.

10. That Section 10(6) of the Bihar State Universities Act, 1976 provides that:

"The Vice-Chancellor shall subject to the provisions of this Act, the Statutes and the Ordinances have power to make appointment to posts within sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and servants other of the to make the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants."

9. It is admitted that the then Human Resources Development Department/ Education Department, Government of Bihar in its circular No.989 dated 10.05.1991 issued certain significant instruction in respect of the "Staffing Pattern" and in this regard, averment has been made in paragraph no.11 which is reproduced:-

"11. That the Human Resources Development Department /Education Department, Government of Bihar by its circular No. 989 dt.10.05.1991 issue certain significant instruction in respect of the "Staffing Pattern" which is to be followed by the Universities and other higher educational institution in the State of Bihar. According to said circular, only those employees were entitled to be regularized who were appointed up to 10.05.1986 against the sanctioned vacant post by the competent authority after following the dues process of law. It is important to mention here that the said circular withdrawn by the State Govt. by letter dated 28.11.1995.

10. The State has tried to justify their action in



paragraphs no.12 and 13 which are reproduced hereinafter:-

“12. That thereafter in view of several Judgments passed by this Hon'ble Court, the State Govt. vide its letter No. 1820 dated 17.11.1998 directed the Universities to consider the regularization of the services under the staffing pattern of those employees only who fulfill the following criteria:-

(a.) The post on which the employee is working was admissible under the staffing pattern at the time of the appointment.

(b.) The employee was having requisite qualification at the time of appointment,

(c.) The employee was appointed by the competent authority.

(d.) The employee was appointed by following the Act and Rule as well as in terms of Article 14 & 16 of the Constitution of India OR the appointment continued in service without court order.

13. That the matter of regularization in which the fact is almost identical to the present writ application has come to this Hon'ble Court in L.P.A No. 586 of 2013 and analogous cases, in which the division bench of this Hon'ble Court considering the Uma Devi case and M.L Kesari case reported in 2010 (9) SCC 247, held that the benefit of Braj Kishore Singh case reported in 1997 (1) PUR 509, is no more available and consequently the claim of the employee for the regularization has been denied by this Hon'ble Court.”

11. Thus, they have denied the grievance of the petitioners in light of the **Secretary State of Karnataka & Ors. vs. Umadevi & Others reported in (2006) 4 SCC 1 and State Of Karnataka & Ors vs M.L. Kesari & Ors reported in 2010(9) SCC 247** to hold that benefit of **Braj Kishore Singh case** reported in **1997(1)PLJR 509** is no more available and consequently claim of the employee for the regularization has been denied by this Court.

12. Heard the parties.

13. The petitioners were also appointed between the year 1982 to 1984 and their regularization was approved as they had meet the norms of Staffing Patern in the University and the



College as approved by the Board on 14.01.1980. The petitioners have brought on record the evidence regarding the same. The decision of the proceeding of the meeting for preparing norms for staffing pattern for University office, allied office and college held on 12.02.1983 and appendix attached to the same (Annexure 2 to the writ petition). Accordingly, as per the said norms, for regularization, the names of the petitioners, contained in letter dated 03.09.1989 were sent by the principal of the Gopalganj College, Gopalganj to the University, giving the details regarding the petitioners name, their father's name, qualification, date of birth post on which they were appointed, names of appointment authority date of creation of post, nature of appointment, date of joining, period of continuous service in tabular form. The act was done long back and in the meantime the Apex Court laid down law regarding regularization in case of **Uma Devi (Supra) and M. L. Keshari (Supra)**.

14. The respondents for their own fault are delaying the case of the petitioners for denying to give similar relief as has been given to the petitioner of CWJC No.882 of 1998 way back in the year 2001, when the order passed by the learned Single Judge in CWJC No.882 of 1998 and other analogous case was confirmed by the Hon'ble Supreme Court in Civil



Appeal No.7125 of 2000 and Civil Appeal No.7126 of 2000.

The said writ petitions were filed by the staff of the college to which the present petitioners also belong.

15. The Hon'ble Bombay High Court in the case of **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City**, reported in AIR 1954 BOM 232, has held as under:

"8. But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person--we take it that the Income-tax Department is included in that definition--can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

16. The University cannot take step to defeat the right which had already accrued in favour of the petitioners and having been crystallized after the order of the Apex Court. The order passed by the Hon'ble Supreme Court can be said to be in *rem*. I find that misconceived statement has been made in the counter affidavit, insofar as, respondents have relied on the Judgment of **Uma Devi Supra** (Supra) and **M. L. Keshari** (Supra). The decision of the State Government by which the



State Government has approved for regularizing on staffing pattern can only be said to be a decision taken by the Government as per mandate of Articles 162 and 166 of the Constitution of India. The Apex Court has observed in the case of ***Shripal & Anr. vs. Nagar Nigam, Ghaziabad (Civil Appeal Nos. 8158-8179 of 2024)*** that 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. Recently, the Hon’ble Supreme Court in the case of ***Jaggo Vs. Union of India & Ors. (SLP (C) No. 5580 of 2024)***, wherein the Apex Court 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 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.”

17. 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."

18. The State and the University cannot be allowed to defeat the right which they have already delayed by their own



action and the same will only defeat justice to the petitioner for the failure on account of the respondents. The concerned respondents are directed to take corrective steps in light of law laid down by the Apex Court and discussion made hereinabove.

19. The writ petition is disposed of.

20. There shall be no order as to cost.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2025
Transmission Date	NA

