

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19248 of 2024

Sanjeev Kumar son of Nand Kishore Yadav R/O Rampur Hari Niwas, Khabra Road, P.S-Kazi Mohammadpur, P.O-Ramena, District-Muzaffarpur

... .. Petitioner/s

Versus

1. B.R.A. Bihar University, Muzaffarpur through Registrar
2. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur
3. The Registrar, B.R.A. Bihar University, Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sunil Kumar Singh, Advocate
For the Respondent/s : Mr.Sunil Kumar Karn, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 03-01-2025

Heard Mr. Sunil Kumar Singh, learned counsel appearing on behalf of the petitioner and Mr. Sunil Kumar Karn, learned counsel for the University.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:-

“That this is an application for issuance of an appropriate writs/directions commanding the respondents to make payment of monthly salary of petitioner in Basic Pay of Rs.19,900/- with admissible like D.A. other employee w.e.f. 16.2.2023 because this scale is paid to other class 3rd employees appointed along with petitioner and also grant any other relief, for which petitioner is found



entitled in the facts and circumstances of the case.”

3. Mr. Sunil Kumar Singh, learned counsel appearing on behalf of the petitioner submits that the petitioner has already filed a detailed representation making out a case of the clear discrimination amongst petitioner and other four Daily-wagers, who were engaged as per the order contained in Memo No.Gen/02 dated 14.02.2020 (**‘Annexure – P/1’**). It is contended that the Registrar of the University came out with office order contained in Memo No.P/360 dated 16.02.2023 (**‘Annexure -P/3’**) by leaving only the name of the petitioner, who was engaged, vide Memo No.Gen/02 dated 14.02.2020, and has recommended other Daily-wagers, namely, Smt. Ranjana Tiwari, whose name figures at Sl. No.1, Mr. Kumar Kartikey (at Sl.No.3), Mr. Prabhat Kumar (at Sl.No.4) and Mr. Navin Kumar (at Sl. No.7) from the said list.

4. It is the case of the petitioner that all the four Daily-wagers were engaged against the sanctioned and vacant posts for smooth functioning of the University, however, without there being any adverse remarks against the petitioner or there being any terms and conditions laid down in the engagement letter dated 14.02.2020, the petitioner has been discriminated. Learned counsel submitted that it is a clear case of



discrimination with the petitioner, who has been working on Class III post and he is entitled Pay Scale of Rs.19,900/- and the applicable Dearness Allowance @ 34 % making out total salary of the petitioner as Rs.26,666/-.

5. *Per contra* Mr. Sunil Kumar Karn, learned counsel appearing on behalf of the University submits that there without being any counter affidavit, it can not be ascertained as to whether the petitioner has been discriminated and he has prayed to file counter affidavit. He further submits that as per the facts as has been stated in the present writ petition and the office order dated 16.02.2023 (**Annexure '3'**), he is not able to answer, as to whether, the petitioner, who was engaged along with four other Daily-wagers, vide order dated 14.02.2020, has been discriminated. Learned counsel further submitted that in any case, the petitioner has already filed a detailed representation, the same will be expeditiously considered and disposed of by the competent authority.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the petitioner and the University, I find that the petitioner has been able to make out a case of discrimination, who was engaged, vide Memo No. Gen/02 dated 14.02.2020



and he has been left out without any reason for not being given equal treatment as has been given to four other Daily-wagers, who were also engaged, vide Memo No.Gen/02 dated 14.02.2020.

8. Recently, the law has been laid down by 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, as follows : -

*“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.”

9. Since the petitioner has already filed a detailed representation before the Vice Chancellor, B.R.A. Bihar University, Muzaffarpur on 01.10.2023, the Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur must call for the service particulars of the petitioner along with the other four Daily-wagers, who were engaged, vide office order dated 14.02.2020 with whom the petitioner has been able to make out a case of discrimination, and take corrective measures, in the light of the law laid down by the Apex Court thereby giving equal treatment to the other four Daily-wagers. In case, he finds not to interfere with the office order dated 16.02.2023, in that case, he is



required to first provide opportunity of hearing to the petitioner and pass a speaking order expeditiously.

10. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08/01/2025
Transmission Date	NA

