

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 9463 of 2019

Smt. Nupur Basu

Versus

The Union of India and Others

For the Petitioner : Mr. Shamik Chatterjee, Adv.
Mr. Aditya Bikram Mahata, Adv.
Mr. Suman Bhanja, Adv.
Mr. Sahil Kabir, Adv.
Ms. Shrabanti Khatun, Adv.

For the Respondent Nos. 3 to 6 : Mr. L. K. Gupta, Ld. Sr. Adv.
Mr. D. N. Ray, Ld. Sr. Adv.
Mr. Bhaskar Mukherjee, Adv.
Mr. D. Dutta, Adv.

Heard on : 07.05.2025

Judgment on : 09.07.2025

Ajay Kumar Gupta, J:

1. This instant writ petition, filed by the Petitioner, is the second round of litigation seeking regularisation of her service along with consequential benefits.

2. The brief facts of the writ petitioner is that she was appointed as a Secretarial Assistant at Indian Institute of Management, Calcutta (in short IIMC) on 18th December, 2007 with due approval from the Ministry of Human Resource Development (in short MHRD). Her appointment was initially on contractual basis for a period of two years i.e. from 18.12.2007 to 17.12.2009. Thereafter, her contractual appointment was renewed time to time without any break in service till 25.12.2018. During this period, the Writ Petitioner discharged her duties alongside other regular employees.

3. However, on 16th August, 2018, IIMC issued a fresh letter of engagement effective from 1st January, 2018 upto December 31,2018 which arbitrarily and retrospectively nullified her previous service. Being aggrieved by the said engagement letter dated 16.08.2018, the petitioner earlier filed a writ petition being Writ Petition No.

24205/2018 with prayer to regularise the service from the date of initial appointment, in accordance with law.

4. The said writ petition was heard and disposed of by Co-Ordinate Bench of this Court vide order dated 13.12.2018 with following direction as inter alia: -

“Accordingly, the said impugned proposal dated 16th August, 2018 stands withdrawn and cancelled.

Mr. Bari, learned Counsel for the petitioner further submits that since the petitioner has been serving the respondent Institute for about 11 years and her performance has been impeccable, she should be considered for permanent absorption.

I grant liberty to the petitioner to make a prayer for permanent absorption to the respondent no. 6 in course of tomorrow.

The respondent no. 6 shall take a reasoned decision on such representation of the petitioner in accordance with law as early as possible, preferably by 25th December, 2018, since that is the date when the contractual tenure of the petitioner expires. The decision so taken shall be communicated to the petitioner on the day itself.

Needless to say, that the performance of the petitioner over last 11 years shall be considered by the respondent and also given the fact that she is 59 years old, it is expected that the respondent no. 6 shall consider the petitioner's case sympathetically.

No useful purpose will be served by keeping the writ petition pending. Since no affidavit has been called for, allegations contained in the writ petition are deemed not to be admitted by the respondents.

WP No. 24205 of 2018 is, accordingly, disposed of."

5. In pursuant to the said direction passed by the Co-ordinate Bench of this Court, the writ petitioner submitted her representation with a prayer for permanent absorption in service on 14.12.2018. The said representation was duly received by the office of Board of Governors, Indian Institute of Management, Calcutta. Prior to that, the order passed by the Co-ordinate Bench was also duly communicated upon the respondent concerned. The said communication was received by respective office.

6. The time limit granted by the Hon'ble Co-ordinate Bench for taking appropriate action expired on 25.12.2018. However, no

decision was taken by the respondent no. 6 in terms of order passed by the Hon'ble Co-ordinate Bench within the stipulated period. On 24.12.2018, the Acting Director of IIM Calcutta informed that the representation dated 14.12.2018 had been placed before the Board of Governors for consideration and that the decision of the Board shall be communicated without any indication and/or mentioning regarding further continuation of service to the petitioner as her tenure of service was expiring on 25.12.2018. No reference was made regarding the continuation of the service beyond 25.12.2018, which marked the end of her contractual tenure. Despite the impending deadline, no reasoned decision was communicated to the petitioner. Such inaction and failure on the part of the respondent constitute a deliberate, contumacious and intentional violation of the order passed by the Hon'ble Co-ordinate Bench. Consequently, the petitioner's service was discontinued on 25.12.2018.

7. After expiry of 2 months, the petitioner was served with a letter dated 05.03.2019 wherein the decision of the Board of Governors of IIM, Calcutta was communicated. The said decision, structured in, containing eight points, denying the renewal of the engagement of the petitioner but also rejected her legitimate and

justifiable claim for regularisation/absorption of her service. Accordingly, the writ petitioner has filed this Writ Petition contending herein that the impugned decision of the respondent in letter dated 05.03.2019 is liable to be set aside for the following reasons as follows:-

a) In the letter issued to MHRD on January 31, 2006 wherein it was specifically mentioned that "there are presently 12 posts of Stenographer in the grade of Rs. 5000-150-8000/- lying vacant. Accordingly, you have proposed to engage 6 (six) secretarial assistants urgently where the minimum emoluments in the Stenographer's post would work out to Rs. 12,000/- (approx.) per month which was at par with the regular employees in accordance with the 5th CPC. The breakup of the financial involvement was clearly mentioned and duly approved by the MHRD and communicated to the Director, IIM Calcutta vide their letter bearing no. F. 1-8/2006-ST. V dated May 2, 2006.

In case of Faculty / Non-Faculty ratio, as per the guideline of MHRD, student and faculty ratio should be 1:10 and the Faculty and Non-Faculty ratio should be 1:1.1. Present student strength in IIM Calcutta is 1260. Thus, mathematical calculation comes to Faculty strength is $1260 / 10 = 126$. Simultaneously, Faculty and Staff ratio should be $126 \times 1.1 = 139$. The present regular non-teaching strength in the Institute is around

90 (including officers), so the absorption of all the 23 contractual employees could be accommodated easily. This is nothing but a misrepresentation of the fact with an intention to oust the petitioner from the zone of consideration.

b) That letter issued to Director by MHRD on May 2, 2006 wherein it was clearly mentioned in the subject of the letter "Conversion of 12 vacant posts of stenographers to 6 posts of Secretarial Assistants" so the re-designation words are not applicable for the posts of Secretarial Assistants. Though these communications are on record and still the respondents are so adamant that they are denying the lawful claim of the petitioner at the cost of misrepresentation and incorrect statement of facts.

c) That in the letter issued to the MHRD on January, 31, 2006 wherein entire breakup was made for the counterpart of the post even commitment was given to the MHRD that "Additionally, other statutory and welfare benefits, as applicable, would be given to such staff". On the basis of that MHRD had approved the case in their letter No. F. 1-8/2006-TS. V dated May 2, 2006. Till date the petitioner does not get any statutory benefits from the Institute. It is pertinent to mention that the Institute authority has in the motive of disobeying its superiors. Rather the IIMC has vitiated the spirit of the Art. 21 and 23 of the Constitution of India upon seer

denial of the legitimate claim of the petitioner that too at the verge of her age of superannuation. However, the IIMC has allowed person who had already crossed 60 years of age, but the case of the petitioner in spite of all favourable conditions not been considered as the petitioner did not agree to the proposal as made by the respondent in memo dated 16.08.2018.

8. Petitioner further states that there is neither been any resignation tendered on the part of the petitioner nor any formal order of termination of service, for which the respondent authority cannot freshly engage the petitioner in the same post. Moreover, the initial appointment was granted as per the decision of the Board upon being approved by the concerned Ministry for which the Director in-charge of the said institution does not have any authority and jurisdiction to overlap and override such decision of the Ministry and thereby in an absolutely arbitrary and capricious manner engage the petitioner freshly by giving a go-by to the initial appointment and the consequential benefits including any service, emoluments/ service benefits and most importantly the aspect of regularization for discharging of continuous service for more than ten years has already been under consideration of the concerned Ministry in compliance with the judgment of The Hon'ble Apex Court passed in **Secretary,**

State of Karnataka & Ors. Vs. Umadevi (3) & Ors.¹. Therefore, such impugned communication dated 05.03.2019 is absolutely without jurisdiction and a glaring of colourable exercise of power by acting de hors the procedures of law and travelling beyond the legal competence and jurisdiction of the concerned institution. Hence, this Writ Petition.

SUBMISSION ON BEHALF OF THE PETITIONER:

9. Learned counsel appearing on behalf of the petitioner strenuously argued and submitted that the IIM, Calcutta had offered contractual appointment to the post of Secretarial Assistant to the petitioner after issuing letter of appointment dated 18th December, 2007 upon following due process and Rules of Recruitment on a contractual basis for a period of two years subject to further extension and renewal of contract along with admissible service benefits.

10. The service was extended and benefits were enhanced from time to time. The service of the petitioner was lastly extended on

¹ 2006 (4) SCC 1

December 13, 2017 on the same post for a further period of one year till 25th December, 2018 at a revised monthly emolument of Rs. 31,635/-.

11. The Ministry of Human Resource Development (MHRD), Government of India had approved contractual employment under the said Institution in pay role of IIM, Calcutta preferred an application before the concerned State authority under the Ministry of Human Resource Development, Government of India by stating that all such employees who were recruited against permanent vacancies by adhering to the Rules of Recruitment and Procedure were offered consolidated by initially which was fixed as per the scale of pay in course of regular employee for the particular post on August 2015.

12. The petitioner also highlighted to the fact that despite the prolonged and uninterrupted period of service rendered by such employees but neither had been regularised nor granted adequate service benefits. In contrast, several other IIM had framed specific rules for regularisation of employees under the pay role of the concerned Institution.

13. It was further submitted that the concerned Ministry made a communication on September 29, 2015 to the said Institution for taking appropriate and necessary action in the matter of regularisation of the contractual employees in the pay role of Institution working for more than 8 years without any break of service. The Memorandum was issued vide F.N.-19-1/2014-Skt. II dated 2nd May, 2015 issued by the concerned Ministry to all the Heads of Institutes or organisations under the Ministry of Human Resource Development by referring to the judicial proceedings. In view of the Memorandum also cautioned against further appointments to sanctioned post without adhering to prescribe recruitment process.

14. The petitioner was appointed against a sanctioned vacant post by following proper recruitment procedures, including public advertisement, formal selection process and with the prior approval of the concerned Ministry. Therefore, having rendered continuous and satisfactory service for over ten years of, she has legitimate expectation of regularisation. Her performance was never found wanting, nor was her appointment questioned as being illegal. Hence, she fulfilled all the essential criteria for regularisation. The issuance

of the engagement letter dated 16th August, 2018, arbitrarily nullified her past service, is wholly unjustified, arbitrary, and legally unsustainable. It disregards her appointment since December 2007, and violates the decisions of competent authorities.

15. It was further submitted by the learned counsel that despite the essential and permanent nature of her role, she continued to remain on a contractual basis. Trusting her consistent performance and dedication to the organization, she hoped for eventual regularization. However, her service was abruptly discontinued after 11 years, which not only undermines her trust in the fairness of the institution but also exemplifies a gross misuse of authority.

16. It was further contended that her continuous and exemplary service for over a decade gives rise to a legitimate expectation of regularization. Her work is indispensable for the smooth functioning of the IIMC and denying her permanency, despite fulfilling perennial responsibilities, constitutes a gross violation of fairness and equity.

17. It was also argued that the principle of equality enshrined in the Constitution prohibits arbitrary discrimination between

contractual and permanent employees performing identical duties. The denial of regularization amounts to unjust and unequal treatment, violating Articles 14 and 21. Despite fulfilling all criteria and consistently receiving service extensions in service based on performance, the petitioner was given with termination instead of regularization. This act of terminating a loyal and capable employee is both unjustified and devoid of compassion.

18. The Learned counsel further argued that denying regularization infringes upon Articles 14 and 21 of the Constitution, depriving her of equal treatment and the right to livelihood. The petitioner underscores the financial insecurity and absence of social benefits-pension, medical coverage, and gratuity that have resulted from her contractual status. This instability denies her the dignity and security she rightfully deserves after years of dedicated service.

19. The continued refusal of regularization not only harms the petitioner but also perpetuates inequality and lowers morale among similarly placed employees. Such actions reflect a disregard for the workforce's welfare and justice. The arbitrary denial of regularization

constitutes a breach of Articles 14 (Equality before the law), 19(1)(g) (Right to livelihood), and 21 (Protection of life and personal liberty).

20. The Learned counsel emphasizes the Hon'ble Supreme Court's judgment delivered in ***Jaggo v. Union of India***² which recognized the indispensable nature of long-serving employees' work and condemned the misuse of temporary employment labels for roles that are essential and recurring. The judgment affirmed that even "irregular" appointments, if not "illegal," warrant regularization under the principles established in the ***Uma Devi (Supra)*** case.

21. Learned counsel has further placed reliance upon the following judgments to support of his contention for regularisation of the petitioner's service as under: -

*i) Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Others*³ particularly paragraphs nos. 43, 44, 47, 50 to 53;

*ii) State of Karnataka and Others Vs. M.L. Kesari and Others*⁴ particularly paragraphs nos. 9 to 11;

² 2024 SCC Online SC 3826

³ (2006) 4 SCC 1;

⁴ (2010) 9 SCC 247;

iii) *Nihal Singh and Others Vs. State of Punjab and Others*⁵ particularly paragraphs nos. 18, 20, 21, 22, 23 24, 28, 29, 31, 32, 33, 35, 36, 37, 39;

iv) *Amarkant Rai Vs. State of Bihar & Ors.*⁶ particularly paragraphs nos. 4, 9 to 15;

v) *Narendra Kumar Tiwari Versus State of Jharkhand & Ors.*⁷ particularly paragraphs nos. 2, 4, 5, 6, 12, 13, 14;

vi) *Ravi Verma & Ors. Vs. Union of India & Ors.*⁸ particularly paragraphs nos. 4, 5, 6, 12, 13, 14;

vii) *Sheo Narain Nagar & Ors. Versus State of Uttar Pradesh and Anr.*⁹ particularly paragraphs nos. 1 to 3, 7 to 9;

viii) *Chander Mohan Negi & Ors. Vs. State of H.P. and Ors.*¹⁰ Particularly paragraphs no. 13;

ix) *Somesh Thapliyal & Anr. Vs. Vice Chancellor, H.N.B. Garhwal University & Anr.*¹¹ particularly paragraphs nos. 39 to 45, 49 and 50;

⁵ (2013) 14 SCC 65;

⁶ (2015) 8 SCC 265;

⁷ 2018 (8) SCC 238;

⁸ 2018 SCC OnLine SC 3860;

⁹ (2018) 13 SCC 432;

¹⁰ (2020) 5 SCC 732;

¹¹ (2021) 10 SCC 116;

*x) Raman Kumar & Ors. Vs. Union of India & Ors.*¹²
particularly paragraphs nos. 8, 10 and 13;

*xi) Jaggo v. Union of India and Ors.*¹³ *particularly*
paragraphs nos. 10 to 28;

*xii) Ushaben Joshi Versus Union of India & Ors.*¹⁴
particularly paragraphs nos. 17 and 18;

*xiii) Vinod Kumar & Ors. Versus Union of India & Ors.*¹⁵
particularly paragraphs nos. 3 to 9;

*xiv) Shripal & Anr. Vs. Nagar Nigam, Gaziabad*¹⁶
particularly paragraphs nos. 5, 8, 11, 13, 14, 15, 18;

xv) Biswajit Goswami and Others Versus Secretary
*(Municipal Affairs), State of WB and Others*¹⁷
particularly paragraph no. 18;

xvi) Mahanadi Coalfields Ltd. Versus Brajrajnagar Coal
*Mines Workers' Union.*¹⁸ ;

¹² 2023 SCC OnLine SC 1018;

¹³ 2024 SCC Online SC 3826;

¹⁴ 2024 SCC OnLine SC 2277;

¹⁵ (2024) 9 SCC 327;

¹⁶ 2025 SCC OnLine SC 221;

¹⁷ 2025 SCC OnLine Cal 393

¹⁸ 2024 SCC OnLine SC 270;

SUBMISSION ON BEHALF OF THE RESPONDENT NOS. 3 TO 6

22. Per contra, the learned senior counsel, Mr. Gupta appearing on behalf of the respondent nos. 3 to 6 vehemently opposed the prayer of the learned counsel appearing on behalf of the writ petitioner and further submitted that on 19th July, 2007, a notice was published for engagement of Secretarial Assistant on contractual basis and the condition for upper age limit for such engagement was 40 years but the petitioner had offered her candidature against the said contractual service by a letter dated 21st September, 2007 with a request to relax the upper age limit though she reached the age of 48 years. Accordingly, as per her request, she was offered appointment letter on 18th December, 2007 despite crossing age bar and the said appointment was purely on contractual.

23. The petitioner had accepted her contractual engagement with the IIMC on the basis of relaxation of her age. Whereas, for the regular appointment, the question of age limit relaxation does not arise and if such relaxation has been made, it would be illegal and not merely irregular. Accordingly, on 29.09.2015, following the ratio of **Uma Devi's Case**, the Ministry of Human Resource Development intimated the respondent no. 3 that no one should be employed

against a sanctioned post without following the due process of recruitment. Therefore, question of regularisation of the petitioner does not arise at all.

24. It was further submitted that on 20th August, 2018, the petitioner raised an objection with regard to pay package offered to her for renewal of the contractual agreement. Non-regularisation was never her grievance. Her only grievance was to effective date from which her pay package as per the offer is to be implemented. Accordingly, her earlier writ petition was actually with regard to the challenge of her pay package. However, the Learned Co-ordinate Bench, during hearing, gave a liberty to the petitioner to pray for her regularisation by way of representation. Accordingly, the petitioner had sent a representation on 14th December, 2018 claiming regularisation of her service.

25. The Board of Governors of IIM, Calcutta took decision on such representation and turned down only on the ground that there was no sanction post of Secretarial Assistant in the Institution and the engagement of the petitioner was purely contractual in nature and not against the sanctioned vacant post.

26. The said decision was taken by the Board of Governors on 5th March, 2019 and finally concluded that the regularisation of her appointment for service against any unsanctioned post could not be allowed to the petitioner. The petitioner claims for regularisation for her service as Secretarial Assistant in the present writ petition at the age of 59 years on the date of filing of the writ petitioner i.e. on 25th April, 2019 which is not tenable in law.

27. It was further submitted that the petitioner was engaged on contractual appointment against an unsanctioned post at the age of 48 years though the upper age limit for such engagement was 40 years only. She joined and continued to be under contractual engagement with full knowledge and of her own free will. The Writ petitioner was well aware of the consequences of the contractual engagement and, therefore, it does not confirm any right of absorption in the IIMC.

28. Learned senior counsel further argued that the judgments relied by the petitioner is not at all applicable in the present case as the facts and circumstances of the case of the writ petitioner is totally

different and strictly prohibited of an absorption or regularisation in any of the unsanctioned post in view of the principle laid down in **Uma Devi's Case.**

29. Under Rule 12(ix) of the Indian Institute of Management Calcutta Society, the Board has the power "to create teaching, administrative, technical, ministerial and other posts under the Institute other than the Post of Director and to make appointment thereto provided that the posts so created are in the cadres and Scales of Pay as approved by the Central Government in consultation with the State Government from time to time". In the present case since for the cadre of Secretarial Assistant there was no Scale of Pay approved by the Central Government in consultation with the State Government, there was no Sanctioned Post for the same.

30. Learned senior counsel also relied upon the same judgment passed in the case of **Uma Devi (supra)** particularly paragraph nos. 22, 31, 43, 47 and 52 contending therein that a Writ Court cannot issue mandamus in favour of the employees directing the Government to make them permanent if the employees cannot show that they have any enforceable legal right to be permanently observed

or that the State has a legal duty to make them permanent. Whatsoever law laid down in **Uma Devi's case** is binding upon all subsequent judgments passed by the Lesser Bench of the Hon'ble Supreme Court and all High Courts in India.

31. The strength of Bench in the **Uma Devi's Case** was five. Hence, any deviation of the proposition laid down from the said judgment by any subsequent Bench of Lesser Strength was heavily criticised by the Hon'ble Supreme Court in a judgment passed in **Official Liquidator Vs. Dayanand and Others**¹⁹. The said proposition of law as framed by the Hon'ble Supreme Court in **Uma Devi's case** has been reiterated by the Hon'ble Supreme Court in a most recent judgment passed in the case of **Ganesh Digamber Jambhrunkar & Ors. Vs. The State of Maharashtra & Ors.**²⁰ where the Hon'ble Supreme Court held as follows: -

"The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.

¹⁹ (2008) 10 SCC page 1 (paragraphs 77 to 83, 90 to 92)

²⁰ 2023 SCC OnLine SC 1417

We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken."

32. Accordingly, the petitioner does not have any legal right to be absorbed by the respondent no. 3 as such, the writ petition is liable to be dismissed.

33. Considering the rivals arguments and submissions made by the respective parties and on perusal of the record, this Court finds the writ petitioner is praying for regularisation of her service in the post of Secretarial Assistant at IIM-C though her tenure of service ended on 25.12.2018 and thereby fix scale of pay and grant all admissible service benefits along with the arrears as regular employee

of the concerned institution forthwith from the date of joining i.e. December, 2007.

34. Before entering into the merits of this case, this Court would like to deal with the judgments relied by the respective parties in so far as to the regularisation of service. It would be appropriate to deal with the judgment passed by the Hon'ble Supreme Court by a larger Bench in ***Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others***²¹ with regard to issue of regularisation of service on the ground of continuing service for a long period. The Hon'ble Supreme Court held in the said judgment that a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

(Emphasis supplied)

35. It was further held that it is not open to the court to prevent regular recruitment at the instance of temporary employees whose

²¹ (2006) 4 SCC 1

period of employment has come to an end or of ad hoc employees who by the very nature of their appointments do not acquire any right. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all,

innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.

(Emphasis supplied)

36. It was further held that the wide powers under Article 226 of the Constitution are not intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution. It is time that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling

the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

(Emphasis supplied)

37. Appointment made without following due process or the rules for appointment did not confer any right on the appointee and that the Court cannot direct their absorption or regularisation or re-engagement or making them permanent. However, finally the Hon'ble Supreme Court also held that the 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], 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 the Court in the cases above referred to and in the light of the 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 the date. The Hon'ble Supreme Court 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.

(Emphasis supplied)

38. The Hon'ble Supreme Court directed 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; (2) there should be no further by passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme in the case of ***Uma Devi (supra)***.

39. In another judgment relied by the petitioner in the case of **Jaggo v. Union of India**²², recognized the indispensable nature of long-serving employees' work and condemned the misuse of temporary employment labels for roles that are essential and recurring. The judgment affirmed that even "irregular" appointments, if not "illegal", warrant regularization under the principles established in the **Uma Devi's** case.

40. In **Jaggo Vs. Union of India and Others**, the Hon'ble Supreme Court held in paragraph nos. 26, 27 and 28 as under: -

“26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. 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

²² 2024 SCC Online SC 3826

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.

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.

28. In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:

i. The termination orders dated 27.10.2018 are quashed;

ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits.”

41. Upon careful perusal of the aforesaid judgments, it is clear and explicit that temporary, casual or contractual employees of irregular appointments, who were engaged in duly sanctioned post and had served continuously for a decade should be considered for regularisation.

42. In the present case, it is admitted fact that the writ petitioner was initially appointed as Secretarial Assistant on a contractual basis for a period of two years from the date of her joining. The said appointment would be extended further based on satisfaction of her

performance and as per requirement of Institution. Emolument was fixed at a consolidated salary of Rs.12,000/= per month. Petitioner joined in the service on 26th December,2007 and has served as Secretarial Assistant for more than a decade without any break and any adverse remark. However, her appointment was purely temporary basis and was extended time to time. She has drawn lastly a consolidated emolument of Rs.36,500/= without any terminal benefits like gratuity, provident fund, leave encashment etc.

43. Lastly, a letter of appointment was issued freshly/re-engaged the petitioner on 16th August, 2016. Such engagement was given effect from January 01, 2018 upto December 31,2018 by allowing consolidated emolument of Rs. 36,500/- per month with the condition for enhancement upto 8% and payment of other statutory benefits payable as per the institution's rules. According to the petitioner there was no scope for re-engagement against the sanctioned vacant post for which the Petitioner was appointed through a valid selection process as per the decision and approval by the concerned authority as such Petitioner claims pay protection and regularisation of service for continuance of prolonged service.

44. Feeling aggrieved, the writ petitioner challenged the legality and validity of the communication for re-engagement dated 16.08.2018 by filing Writ petition being Writ Petition No. 24205/2018 and the same was disposed of vide order dated 13.12.2018 with aforesaid direction.

45. The Petitioner submitted her representation on 14.12.2018 praying for permanent absorption to the post of Secretarial Assistant in pursuant to the aforesaid order of Co-ordinate Bench of this court. Ultimately, her prayer was turned down and decision of the BOG of the IIMC was communicated with eight reasons and same has been challenged by the Petitioner before this court accordingly the same is subject matter of decision.

46. Affidavit-in-opposition has been filed by Respondent no.3,4,5 and 6 denying all allegations whatsoever made in the Writ Petition and further contended therein that post of Secretarial Assistant was not against sanctioned post. Such appointment was purely on a contractual basis without following the recruitment rules though the respondents admitted that an advertisement for recruitment was published for the post of Secretarial Assistant at "Timesascent" on

19.09.2007 inviting applications from the eligible candidates without reservation for reserved category candidates as mandated in the reservation policy of Government of India. The maximum age bar was 40 years but petitioner was given appointment even crossing 48 years of age as she was working previously therein through outsourced agency. However, she was no longer eligible for the post as per advertisement. Therefore, her appointment was neither irregular or regular appointment. It was just under mutually agreed terms but purely contractual basis and she was fully aware about the consequences in future. Her appointment was on the basis of relaxation of age bar as such appointment can by no imagination be characterized as regular and/or irregular.

47. The contractual engagement of the writ Petitioner was renewed on revised emoluments on expiry of each term on the self-same terms without any demur or protest or claim. Suddenly, Petitioner submitted representation for absorption in service on 14.12.2018 for the first time in terms of the liberty granted by the Co-ordinate Bench just before 11 days of her term ended. However, there was/is no scope to regularise or to absorb in service since Petitioner's engagement was on the concession of the IIMC and not by regular

appointment following the recruitment rules and further the extended contract came to end on December 25, 2018 and all dues were settled.

48. This Court has gone through a judgment passed in ***Nihal Singh and Others (supra)***, where the Hon'ble Supreme Court clearly held that there is no justification for the respondent to take a defence that after permitting the utilisation of service of the petitioner and to say that there is no sanctioned post to absorb the writ petitioner. Sanctioned posts do not fall from the heaven. The respondent has to create them by conscious choice on the basis of some rational assessment of the need.

49. It is apparent from the service of the writ petitioner that there was essential for service of Secretarial Assistant in the Institution for a long period despite the IIMC did not take any step to seek or create the sanctioned post of the Secretarial Assistant.

50. It reveals from the notification that an application of total 6 Secretarial Assistant posts (contractual) was invited from the eligible candidates. The eligibility criteria for Upper age limit were below 40

years with other qualifications as stipulated in the said notification. The posts were approved by the Ministry of Human Resource Development with fixed emoluments of Rs. 12,000/= per month as per the request and proposal of IIMC. However, no Sanctioned post was created as per the Rules till 2018. Petitioner was appointed as Secretarial Assistant in view of the said notification though she was above 40 years on the basis of her own request as she was working therein earlier through outsourced agency. However, without fulfilling the eligibility criteria to say that appointment was neither regular nor irregular but it was illegal or back door entry. At the time of appointment, her age was 48 years but the IIMC has given her appointment without fulfilling the eligibility criteria as per notification and Petitioner was well aware about the said fact.

51. This Court is of the considered view that such appointment was clearly a violation of the notification of recruitment. The writ petitioner was well-aware about the consequences as her appointment was purely on a contractual basis and the same was time to time extended without any demur or objection or any claim. She had filed a writ petition challenging the appointment letter dated 16.08.2018 thereby she was re-engaged with effect from January 01,

2018 upto December 31, 2018 and while disposing of the said writ petition, the Co-Ordinate Bench has given liberty to apply for regularisation of her service which was turned down on the ground that she is not eligible for regularisation as the post was not against the sanctioned post. This court does not find any substantive evidence that the post was sanctioned by the concerned authority. It was only an arrangement in place of Stenographers as per request and proposal of IIMC.

52. None of the judgments relied by the Petitioner are applicable in the present case. Rather the Hon'ble Supreme court in **Uma Devi (Supra)** case has specifically held in paragraph 43 as follows:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the

appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Court's acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of

the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the by passing of the constitutional and statutory mandates”.

53. In **Amarkant Rai v. State of Bihar**, the Hon’ble Supreme court particularly held in paragraph 11 as under:

*“11. Elaborating upon the principles laid down in Umadevi (3) case and explaining the difference between irregular and illegal appointments in **State***

of Karnataka v. M.L. Kesari, this Court held as under: (M.L. Kesari case, SCC p. 250, para 7)

“7. It is evident from the above that there is an exception to the general principles against ‘regularisation’ enunciated in Umadevi (3), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

54. Consequently, this Court does not find any illegality in the rejection of her representation dated 14.12.2018, as her engagement had ended on 25th December, 2018 and no further extension was granted by the IIMC. Moreover, her appointment was apparently illegal and not made against sanctioned post. Therefore, the order rejecting her prayer warrants no interference. Accordingly, the judgments referred by the learned counsel for the petitioner, most of them are based primarily on the principles laid down in **Uma Devi's** case (supra) are no manner applicable in the present case, as the appointment was neither made in accordance with recruitment rules nor against a sanctioned post.

55. In the light of above discussion, this writ petition being **WPA 9463 of 2019** is, thus, **dismissed** without any order as to costs.

56. Interim order, if any, stands vacated.

57. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

58. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A/P.Adak