

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE**

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 12347 of 2018

Sandip Mondal & Ors.

Vs.

The State of West Bengal & Ors.

For the petitioners	: Mr. Ekramul Bari, Sk. Imtiaj Uddin.
For the State	: Mr. Nilotpall Chatterjee, Mr. Sadhan Kumar Halder.
For the respondent no. 6	: Mr. Amitava Chaudhuri, Mr. N. Roy.
Heard on	: 23.05.2025
Judgment on	: 25.06.2025

Partha Sarathi Chatterjee, J.:-

Prelude:

1. Fundamentally, the present writ petition has been instituted seeking a direction upon the concerned respondents to regularize the petitioners in their respective posts, along with all consequential service-related benefits, including fixation of pay scale and grade pay, commensurate with those accorded to regular employees serving under the State of West Bengal.

Facts:

2. Before proceeding to address the issue raised in the present writ petition, it would be appropriate to refer to the essential facts, as set out in the writ petition, which have led to its institution.

a) Pursuant to advertisements bearing no. BTPL/WBMSCL/1 dated 28.05.2014 and WBMSC/1222 dated 19.05.2015, the petitioners were engaged on a contractual basis in the posts of Assistant Engineer and Sub-Assistant Engineer (Electrical and Civil) under the West Bengal Medical Services Corporation Limited (hereinafter referred to as 'the Corporation'), at a consolidated monthly remuneration of Rs. 20,400/- and Rs. 30,000/- respectively. The initial term of engagement was for a period of two years, subject to the condition that the terms and conditions set forth in the said advertisements, as well as other rules and regulations applicable to contractual employees under the State of West Bengal, would be equally applicable to the petitioners.

b) Although the petitioners were initially engaged for a period of two years, their engagements were periodically extended, subject to their executing an undertaking that such continued engagement would not confer any right to regular employment. Nevertheless, the petitioners were duly considered for absorption into regular employment.

c) Acknowledging that for some time past, the State Government had been following the policy of filling up non-PSC and non-

promotional posts on a contractual basis, and that such engagements were being periodically renewed, the Government reviewed its policy and, *inter alia*, decided that:

“...the employees who are initially recruited on contract basis, following the norms, rules and methods as applicable to the relevant posts, may, if still continuing in contract-service, be brought under regular establishment, subject to the above principles, against regular vacancies in which they have been initially appointed with the approval of the ACC. Consultation with Finance Department will be necessary in such cases.”

- d) Subsequently, vide Memo No. 642-F dated 24th January, 2006, issued by the Special Secretary to the Government of West Bengal, Finance Department, it was clarified that the benefits extended under the earlier memo dated 26.09.2005 would also be applicable to contractual appointments made against regular posts under Statutory Bodies, including local bodies, autonomous bodies, non-Government aided educational institutions, and undertakings owned or substantially controlled by the State Government, subject to the approval of the ACC and consultation with the Finance Department.
- e) The Department of Health & Family Welfare, Government of West Bengal, vide its notification dated 25.02.2011, created a number of posts, including 85 posts of Sub-Assistant Engineers and Assistant Engineers (Electrical and Civil), with a view to

ensuring better utilization of funds under the National Rural Health Mission and allied programmes, for the purpose of construction and maintenance of health infrastructure as well as timely procurement of equipment in various hospitals under the Corporation.

- f) The Notification dated 25.02.2011, issued with the concurrence of the Finance (Audit) Department and the approval of the Cabinet, clarified that the aforesaid posts would be filled up as per the relevant recruitment rules and method of recruitment, and that these posts would carry pay and allowances as admissible under the respective cadre, in accordance with ROPA, 2009 and subsequent orders of the Government.
- g) The petitioners participated in the recruitment process and, having emerged as successful candidates, were appointed to the posts of Assistant and Sub-Assistant Engineers (Electrical and Civil). Their appointments were duly acknowledged by the Corporation through orders issued in 2014 and 2015 (Annexure P-5 to the writ petition).
- h) The Corporation published a notice dated 25.10.2016, notifying that the Board of Directors, in its 20th meeting held on 25.03.2015, had expressed its intention to consider the absorption of existing contractual employees, excluding those re-engaged or re-employed after superannuation, into regular employment of the Corporation. This consideration was limited to those recruited through open advertisement in accordance with the stipulated

norms of the Government. It was proposed that such employees would be offered the existing Pay Band and Grade Pay, along with other service conditions in line with those applicable to regular employees of the Government of West Bengal. It was further decided that such absorption would be carried out in a phased manner, selectively, and based on the recommendations of a Selection Committee.

- i) Further, in its 21st meeting, the Board constituted a Selection Committee and recommended a set of evaluation criteria, along with a phased manner for the absorption of contractual employees of the Corporation into permanent posts. The notice, inter alia, specified that, as a general rule, the length of service in the Corporation would be the primary criterion for an employee to be considered for absorption. Employees who were engaged through a proper selection process and had completed at least two years of service as on 31st March of a given year would be eligible for consideration for regularization, subject to fulfilment of the prescribed norms. However, employees who meet the length-of-service requirement but are not recommended for absorption due to deficiencies in performance may be considered for absorption in subsequent phases, subject to compliance with other prescribed norms.
- j) The petitioners, having been appointed through an open recruitment process against regular vacancies, completed two years

of continuous service. Accordingly, they contend that they fulfilled the criteria laid down in the notice dated 25.10.2016.

k) The Department of Health & Family Welfare, Government of West Bengal, issued an order creating a total of 110 posts of Assistant and Sub-Assistant Engineers for the upkeep and maintenance of 41 Super Speciality Hospitals and 3 newly established Medical College and Hospitals in West Bengal, under the establishments of the Corporation.

l) However, without taking any effective steps toward regularising the services of the petitioners, the Corporation, by its orders dated July 25, 2017 and March 31, 2018, merely extended their contractual engagement. In view of this, the petitioners submitted representations requesting their absorption into regular posts. As those representations failed to elicit any favourable response from the Corporation and/or the respondents, the petitioners have been compelled to file the present writ petition.

Respondents' case:

3. The respondents filed two separate affidavits: one by respondent nos. 1 to 5 (the State and its functionaries), and the other by respondent no. 6 (the Corporation). In the affidavit filed by the State respondents, it was specifically stated that the Corporation was incorporated under the Companies Act, 1956, in the year 2010. The Corporation is an independent body, and the Government provides only limited financial assistance in the public interest. It was further stated that the Corporation is permitted to

charge 4% of the vetted project cost for all engineering projects implemented by it, along with 1% towards administrative expenses.

4. The Corporation engaged its staff through open market recruitment. However, since the Companies Act, 1956 does not prescribe any specific recruitment rules, the recruitment of the Corporation's staff was governed by the prevailing Government recruitment rules, procedures, and/or orders.
5. The present petitioners were engaged pursuant to an advertisement dated 28.05.2014 published by the Corporation, with the objective of better utilizing funds under the National Rural Health Mission and allied programmes for the construction and maintenance of health infrastructure, as well as the procurement of medical equipment for various hospitals. Accordingly, the Corporation created certain posts by its notification dated 25.02.2011, which clarified that, apart from the 4% project cost and 1% administrative cost, the Corporation would not receive any additional financial support from the State Budget.
6. Respondent nos. 1 to 5 contended that the petitioners were initially engaged on a contractual basis for a period of two years; however, their engagements were subsequently renewed from time to time. It was further stated that the petitioners were never engaged against sanctioned vacancies. Although the petitioners' applications for regularisation were forwarded to the Finance Department, Government of West Bengal, the proposal was not considered in view of the decision of the Hon'ble Supreme Court, reported in (2006) 4 SCC 1 (*State of Karnataka vs. Umadevi & Others*). Nevertheless, certain service-related benefits were

extended to the contractual employees of the Corporation by the Finance Department, Government of West Bengal, vide its order dated 07.08.2019.

7. In the affidavit filed by the Corporation, it was specifically contended that the petitioners were appointed on contractual basis on the terms and conditions contained in their respective letters of appointment, to the posts of Assistant and Sub-Assistant Engineer (Electrical & Civil) at the Corporation, which is wholly owned by the Government of West Bengal, in terms of the advertisement dated May 28, 2014. Therefore, the question of regularising their service does not arise at all.
8. The Corporation adopted a policy decision to extend the benefits of pay revision to the petitioners in accordance with the provisions of ROPA 2019. Accordingly, as on date, one Assistant Engineer and one Sub-Assistant Engineer are drawing monthly salaries of Rs. 79,583/- and Rs. 50,792/-, respectively.
9. Although the petitioners have placed reliance on a memorandum dated 26.09.2005 issued by the Finance Department, Government of West Bengal, it is submitted that the said memorandum is applicable only to Government Departments and not to employees of the Corporation, which was incorporated in the year 2010. Moreover, the said memorandum, which is not binding on the Corporation, has no present relevance.
10. Although the Corporation issued the notice dated 25.10.2016, based on a decision of its Board of Directors regarding the formation of a Selection Committee to consider the regularisation of contractual engineers (including the petitioners) in a phased manner, the process of regularisation could not be undertaken due to the Corporation's limited

financial resources and the absence of any specific policy of the State Government on this issue. The proposal for regularisation could not materialise without the approval of the Finance Department, Government of West Bengal. As the State Government declined to assume any financial liability, it became virtually impossible for the Corporation to regularise the services of the petitioners. The aforesaid notice dated 25.10.2016 has been kept in abeyance.

11. A total of 244 contractual posts were created by the Corporation with the approval of the Finance Department, Government of West Bengal. Of these, only 68 posts were filled through direct engagement, and the selected candidates have been rendering their services since then. The remaining posts have been filled through re-employment and outsourcing. The contractual engineers are being paid the minimum basic pay, dearness allowance (DA), annual increment, and house rent allowance (HRA), but are not entitled to pensionary or promotional benefits. As a government undertaking, the Corporation cannot implement any policy independently without the prior sanction of the Finance Department.
12. In their responses to the affidavits, the petitioners contended that the Principal Secretary, Department of Finance, Government of West Bengal, was a member of the Board of Directors of the Corporation, which had taken the decision to absorb the contractual employees of the Corporation, including the petitioners. It was further asserted that the Corporation is a self-sustaining entity and does not require any grant-in-aid from the State Government. In support of this, the petitioners pointed out that the Corporation earned a net profit of Rs. 18 crores in the financial

year 2017–18, which increased to Rs. 53.22 crores in the financial year 2023–24.

13. By filing a supplementary affidavit, the petitioners placed on record an order dated 13.05.2024 issued by the Corporation, and submitted that 68 engineers, including the petitioners, had been engaged against sanctioned posts.

Submissions:

14. Mr. Bari, learned advocate representing the petitioners, narrated the background facts and argued that petitioners were engaged on contractual basis against the sanctioned posts following a recruitment rule prevailing in all establishments under State Government Departments. He claims that acknowledging the facts that the petitioners are entitled to be absorbed in the regular posts of the Corporation, Board of Directors of the Corporation decided to regularise the services of the petitioners in phrased manner. However, the process of regularisation could not be undertaken using the decision of *State of Karnataka vs. Umadevi & Ors.* as a shield.
15. He argued that the decision in *Uma Devi* itself distinguishes between illegal and irregular appointments. He submitted that irregular appointments may be regularised if certain conditions are fulfilled. He further contended that the Hon'ble Supreme Court, in a series of judgments, has observed that the decision in *Uma Devi* cannot be used as a shield to justify exploitative engagements that continue for years without

any attempt to fill up the posts through regular recruitment as per the applicable rules.

16. To bolster his submissions, he cites the decisions, reported in *2024 SCC OnLine SC 3826 (Jaggo vs. Union of India & Ors.)*, *(2024) 9 SCC 327 (Vinod Kumar & Ors. Etc. vs. Union of India & Ors.)*, *2025 INSC 144 (Shripal & Anr. vs. Nagar Nigam, Ghaziabad)* and one unreported decision by a Co-ordinate Bench of this Court in *WPA 27693 of 2024 (Indian Oil Corporation Limited vs. Union of India & Ors.)*.
17. In rebuttal, Mr. Chaudhuri, learned Advocate appearing for respondent no. 6, submitted a written note of arguments and also advanced oral submissions. He contended that the petitioners were engaged purely on a contractual basis, pursuant to the advertisement dated 28.05.2014, for a specific purpose, i.e., to implement the National Rural Health Mission and its allied programmes, particularly for the construction and maintenance of health infrastructure and the timely procurement of equipment in various hospitals under the Corporation. He further submitted that the National Rural Health Mission is a flagship programme of the Central Government.
18. He submitted that, at the time of their entry into contractual service, the petitioners had signed undertakings clearly stating that their engagements would not entitle them to regular employment. Therefore, according to him, the petitioners' claim for regularisation is untenable.
19. He submitted that the Corporation is sympathetic to the petitioners. Their tenure of service has been extended up to the age of 60 years. The petitioners are drawing substantial salaries, and the Corporation has also

extended the benefits of pay revision to them, at par with regular employees of the State Government. It was further submitted that the petitioners are currently enjoying the benefits under ROPA, 2019.

20. He further submitted that although the Corporation is wholly owned by the Government of West Bengal, it cannot undertake any process of regularisation without the prior approval of the Finance Department, Government of West Bengal. Accordingly, he contended that the petitioners' claim for regularisation cannot be acceded to.

21. To invigorate his submissions, he relied on the decisions, reported in *AIR 2006 SC 1806 (Secretary, State of Karnataka & Ors. vs. UmaDevi & Ors.)* and three unreported decisions: two by two different Hon'ble Division Benches of this Court in *FMA no. 3730 of 2014 & FMA 3731 of 2014 (Sri Utpal Prasad Roy vs. The State of West Bengal & Ors.)*.

22. Mr. Chatterjee, learned advocate appearing for the State adopted the submissions advanced by Mr. Chaudhury. He also claimed that the petitioners have been engaged on contractual basis and they signed an undertaking that their engagement will not entitle them for regularisation of their service. He further claimed that the petitioners were engaged to fulfil one Mission introduced by the Central Government, namely, National Rural Health Mission. He submitted that to further the objective of that mission, the Corporation engaged the petitioners. He submitted that the State Government clarified its stand that it would not undertake financial liability and the Corporation shall not get any financial support from the State Budget.

Analysis:

23. If the admitted facts are summarized, it is evident that the petitioners possess the requisite qualifications for appointment to the posts of Assistant and Sub-Assistant Engineers. In 2014 and 2015, the petitioners were appointed to the Corporation, which is admittedly a company wholly owned by the State of West Bengal, pursuant to a recruitment process conducted in accordance with the recruitment rules applicable to regular posts under the State of West Bengal.
24. It is undisputed that their initial terms of engagement were for a period of two years; however, these engagements have been periodically renewed. Moreover, the petitioners have been enjoying pay revisions and other benefits on par with those granted to regular employees serving under the State of West Bengal. Mr. Chaudhury has submitted that the respondents have resolved that the petitioners' engagements shall continue until they reach the age of 60 years and will not be terminated prior to that. The order dated 13.05 2024 issued by the Corporation (Annexure- R/1 to the Supplementary Affidavit filed by the petitioners) clearly noted that the petitioners were engaged against sanctioned posts.
25. Therefore, it is clear that the petitioners' entry into contractual service cannot be classified as an illegal appointment and at best, it may be characterized as irregular. The nature of the petitioners' work is clearly perennial, and their long and uninterrupted service in the Corporation strongly indicates that their roles are integral and essential to the efficient functioning of the Corporation.
26. As previously noted, the State of West Bengal, by its memorandum dated 26.09.2005, acknowledged that for some time it had been following

the policy of filling non-PSC and non-promotional posts through contractual appointments. In light of this, the State decided to bring such contractual employees under the regular establishment. Subsequently, by a memorandum dated 24.01.2006, the State Government clarified that the benefits extended under the memorandum dated 26.09.2005 would be equally applicable to statutory bodies, local bodies, autonomous institutions, and undertakings owned or substantially controlled by the State Government.

27. In accordance with the aforesaid policy, steps were initiated to regularize the services of the petitioners and bring them under the regular establishment. Consequently, the Board of Directors of the Corporation created certain posts to facilitate such regularization. To further this objective, the Board constituted a Selection Committee and laid down specific criteria for regularizing the petitioners' services in a phased manner. It is pertinent to note that the Principal Secretary, Department of Finance, Government of West Bengal, was a member of the said Board. However, as averred by the Corporation, the process could not be completed due to financial constraints.

28. Conversely, the State of West Bengal in its affidavit has contended that in view of the ratio laid down in the decision of UmaDevi (supra), the petitioners' prayer for regularisation could not be acceded to.

29. In the decision of Jaggo (supra), the Hon'ble Supreme Court made the following the observation regarding the decision of Uma Devi (supra):

“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 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."

30. The Hon'ble Supreme Court, in the case of *Shripal & Anr.* (supra), observed that the judgment in *Uma Devi* (supra) cannot be used as a shield to justify exploitative contractual engagements that continue for years without the employer initiating a legitimate recruitment process. This view has been reaffirmed in the subsequent decision of *Vinod Kumar & Ors. etc.* (supra).

31. A concerning trend has emerged wherein Government institutions, in an apparent attempt to evade liabilities relating to pension and

promotional benefits, are increasingly resorting to contractual, part time, outsourcing service, or project-based appointments, even though the duties assigned to such employees are perennial in nature. Many of these individuals have rendered uninterrupted service for well over a decade. Support for this view cannot be obtained from the decisions in *Jaggo* (supra), *Shripal & Anr.* (supra), and *Vinod Kumar & Ors. etc.* (supra).

32. In the case of *Jaggo* (supra), the Hon'ble Supreme Court, taking note of the fact that the initial engagements of the appellants had been labelled as 'contractual', observed that they had been rendering daily and continuous service over an extensive period spanning decades. The Court further noted that the nature of their duties was fundamental to the functioning of the offices and closely resembled responsibilities typically associated with sanctioned posts. In light of these factors, the Court directed the regularisation of their services. It was further observed that the High Court had placed undue emphasis on the initial nature of the appellants' engagement, overlooking the substantive character of their long-standing service.

33. In the present case as well, the initial engagements of the petitioners were labelled as contractual. However, they were appointed against sanctioned posts, and their appointments can by no means be characterized as illegal or back-door entries. The petitioners have been discharging duties of a perennial nature and have been serving the Corporation on a daily and continuous basis for over a decade. The nature of their responsibilities is also akin to those of regular employees. The respondents had also initiated a process to regularize the petitioners'

services in a phased manner; however, the process was ultimately left incomplete.

34. In the present case, in an attempt to resist the petitioners' claim for regularisation, the respondents have taken the plea that the petitioners' engagements were project-based. However, this plea finds no support in any contemporaneous record and has been raised for the first time only in their affidavit. It is a well-settled proposition of law that such a plea, not substantiated by any official document or contemporaneous evidence, cannot be validly raised for the first time in an affidavit.

35. Furthermore, the Corporation has raised an additional plea that, due to financial constraints, it is unable to bear the liability of regularising the petitioners' services. However, the petitioners, in their reply supported by financial data, have contended that the Corporation has been consistently earning profits amounting to several crores of rupees in each financial year. In light of these facts, the Corporation's plea of financial hardship is untenable and cannot be sustained in law. The Corporation has also taken the plea that the approval and sanction of the Finance Department is required for regularising the petitioners' services. However, as noted earlier, the Corporation's Board of Directors had already taken a decision to regularise the petitioners' services in a phased manner, and notably, the Principal Secretary of the Department of Finance, Government of West Bengal, was a member of that very Board. In view of this, such a plea is not available either to the Corporation or to the State.

36. I have carefully examined the decisions relied upon by the Corporation. However, those judgments are distinguishable on facts and,

therefore, do not support the respondents' case in the present factual context.

Order:

37. Therefore, in view of the discussions and reasons set forth in the preceding paragraphs, the respondents are directed to regularise the services of the petitioners in their respective posts, and to release all consequential benefits, including promotional and retirement benefits, as applicable. The entire process of regularisation shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.
38. With these observations and order, the writ petition is, thus, disposed of. There shall be no order as the costs.

(Partha Sarathi Chatterjee, J.)

Later:-

Mr. Roy, learned advocate representing the respondent no. 6, prays for stay of operation of this order. Prayer is considered and rejected.

(Partha Sarathi Chatterjee, J.)