

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

M.A.T.1066 of 2025

Smt. Nupur Basu

Versus

The Union of India and others

For the Petitioner : Mr. Shamik Chatterjee,
Mr. Aditya Bikram Mahata,
Mr. Sahil Kabir,
Ms. Jayita Das

For respondent nos.3 to 6. : Mr. Jaydip Kar, Sr. Adv.,
Mr. Bhaskar Mukherjee,
Mr. D. Dutta

For the U.O.I. : Mr. Sankar Sarkar,
Ms. Piyas Chowdhury

Judgment on : December 17, 2025.

Madhuresh Prasad, J.:

1. The petitioner is the appellant before us. She approached the writ court seeking a benefit of regularization, which was turned down by the authorities.
2. A brief background leading to filing of the writ petition is that the petitioner/appellant was assigned duties in the Indian Institute of Management, Calcutta (in short 'Institute') being respondent no.3 by an agency providing Human Resource in the said

Institute. She was, accordingly, placed as a Secretary with Deans of various faculties over a period of four years.

3. In 2006, the Institute resolved that contractual engagement would be done through a due process of selection and interview to engage six Secretarial Assistants which were urgently required. The contractual engagement was to carry a minimum emolument which was also specified in the Board's resolution at its 173rd meeting held on 24.12.2005.
4. Pursuant to such decision communicated by the institute to the Under Secretary to the Government, Government of India, Ministry of Human Resource Development, Department of Secondary & Higher Secondary Education, under letter dated 31.01.2006, the Institute came out with an advertisement on 19.09.2007 wherein these six posts of Secretarial Assistant were also advertised. The advertisement clearly stipulates the recruitment to be contractual. The qualification has been specified therein. Experience was also required and an upper age limit of below 40 years was specified in the advertisement. The advertisement further contemplated granting of relaxation of requisite experience and age criteria in case of an exceptional candidate with outstanding hands-on experience.
5. The learned advocate for the appellant/writ petitioner referring to these provisions in the advertisement, very emphatically makes a submission that the petitioner-appellant applied in response to such advertisement and, therefore, her induction on

the post of Secretarial Assistant was based on an advertisement availing a benefit contained in the advertisement regarding relaxation of age; and therefore, the entry/initial engagement was by a process recognized by law. The petitioner/applicant continued thereafter to serve as Secretarial Assistant from her engagement in the above manner from the year 2007 onwards till 2018.

6. The last extension/appointment on contractual basis was with certain terms and conditions, extending her contractual services till December, 2018. She was offended by certain terms and conditions therein regarding fixation of her emoluments and, therefore, approached the writ court by filing a writ petition challenging the letter dated 16.08.2018. The writ petition was numbered W.P. 24205(W) of 2018 and was disposed of on 13.12.2018. The order of the writ court reveals that the proposal dated 16.08.2018, insofar as it offended the petitioner was withdrawn.
7. We find that the writ proceeding for the first time, about six months prior to her attaining the age of superannuation in May 2019, the petitioner raised an issue claiming permanent absorption in the Institution. The writ court granted liberty to the petitioner in the following terms:

“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.”

8. Relying on such liberty, the writ petitioner approached the authorities with her claim for permanent absorption, which was placed before the Board of Governance ('BOG' for short). The BOG rejected the petitioner's representation in the 237th meeting held on 08.02.2019. The rejection was on the following grounds:

“(a) Restriction on the strength of regular/permanent employees of the Insitute as laid down by the MHRD vide letter bearing No.23-3/08-IFD dated 08th May, 2008 wherein MHRD had specifically mentioned that in respect of Non-Faculty posts, the norms specify a Faculty/Non-Faculty ration of 1:1.1 for all institutions.

(b) There was no sanctioned Secretarial Assistant position in the Institute.

(c) Pending decision on re-designation of redundant posts of Stenographer etc., BOG of the Institute approved engagement of Secretarial Assistant on adhoc/contractual basis.

(d) The offer of engagement of Secretarial Assistant being adhoc/contractual in nature and also not against sanctioned vacant post, the mandated reservation policy in the matter of appointment in sanctioned post was not adhered or followed.”

9. The rejection was communicated by a letter dated 05.03.2019, much after the petitioner's last extension as a contractual employee lapsed in December, 2018.
10. The petitioner, under these circumstances, filed a second writ petition order of which is under appeal in the present MAT. The writ petition was numbered as W.P. No.9463 (W) of 2019. The same was finally considered and the claim of the petitioner was dismissed by a Judgment dated 09.07.2025.
11. While rejecting the claim of the writ petitioner, the learned single Judge considered the fact that the petitioner's engagement right from its inception was mutually understood to be contractual. At no point of time, there was any scope either for the employer or the beneficiary to form an opinion that there was

any element of permanence or that the nature of her engagement would entitle her to any regularization or absorption.

12. Considering the decision of the Apex Court in the case of ***Secretary, State of Karnataka and others Versus Umadevi (3) and others*** reported in (2006) 4 SCC 1 and various other judgements including the very recent judgement of the Apex Court delivered in the case of ***Jaggo Vs. Union of India and others.***, reported in **2024 SCC Online SC 3826**. The learned Single Judge was of the opinion that the petitioner's appointment was not entitled to be regularized since the engagement was not against a sanctioned post. In para 51 of the judgement the learned Single Judge has recorded that the appointment was clearly in violation of the notification of the recruitment. The learned Single Judge has further taken note of the fact that the initial joining and continuance till few months prior to attaining the age of superannuation was without any demurer. Having regard to these facts and the law, there was no scope for petitioner's regularization.
13. The learned advocate representing the appellant/petitioner in the present proceeding submits that having regard to the nature of petitioner's engagement founded on an advertisement after according a relaxation of maximum age criteria as per stipulation contained in the advertisement, it cannot be said that her appointment was illegal. At best, it is a case of an irregular appointment. The employer has continued to take work from the

appellant/petitioner for more than a decade. Therefore, it is clear that the nature of work being performed by the appellant is integral to the functioning of the institute and also perennial in nature. Since the initial engagement was based on an advertisement, the fact that it was not against a sanctioned post, cannot be made the basis to deprive her of regularization/absorption. Petitioner has been made to discharge duties of the post for more than a decade. In support of such submission, the learned advocate has relied upon the recent decision of the Apex Court in the case of **Dharam Singh and others Vs. State of U.P. and another** reported in (2025) SCC Online 1735 as also decision of the Apex Court in the case of **Jaggo** (*supra*). He has drawn attention of this court towards paragraph 11 of the said judgement to submit that the rejection of her claim for absorption /regularization is unsustainable.

14. The learned senior advocate representing the respondent nos.3 to 6/Institute, however, has submitted that the judgments relied upon by the appellant does not enure to her benefit. The law laid down by the Apex Court in the case of **Umadevi (3)** (*supra*) by a constitution Bench has been referred and reiterated both in the judgement of **Jaggo** (*supra*) as also in the Judgement of **Dharam Singh** (*supra*).

15. In the case of **Dharam Singh** (*supra*) the Apex Court has taken note of the fact that at the very inception when the petitioners therein were engaged, the employer mooted a request for

sanctioning of the posts, which the Government was not granting. Immediately, within few years after their engagement, they invoked the writ jurisdiction seeking direction upon the State to sanction the posts.

16. Since the employer at the time of engagement of the petitioners therein on ad hoc basis was of the opinion that their engagement was required integral to the Commission's functioning and upkeep it had moved for sanction of the posts and, therefore, the fact that it was the perennial nature of employment was admitted by the employer itself. The issue arising for consideration before the Apex Court in that case was whether refusal to accord sanction for such post was sustainable or not.

17. Insofar as the decision in the case of **Jaggo** (*supra*) is concerned, the learned senior advocate has pointed out from certain paragraphs therein that the initial engagement of the petitioners therein was on Grade-IV post. They had been entrusted with discharge of duties, which were essential housekeeping and similar functions at the Central Water Commission (CWC) Establishment. They had been pursuing their claim for regularization since 2015. It is keeping in view such factual background and the attending circumstances that the Apex Court arrived at a conclusion that their long and uninterrupted service for a period of more than ten years cannot be brushed aside. The Apex Court further took notice of the fact that there was no evidence on record to suggest that their entry

was through any illegal or surreptitious route. The Apex Court also took notice of the fact that in view of their long continuance, the termination letters issued without notice or explanation, violated fundamental principles of natural justice. In the case of **Jaggo** (*supra*) the Apex Court has reiterated and taken note of the earlier Constitution Bench decision in the case of **Umadevi (3)** (*supra*). He has laid emphasis on paragraphs 25 and 26 of the judgment to support the decision of the learned Single Judge that no case was made out for regularization.

18. From the above noted submission and facts a preliminary issue arising for consideration is whether the petitioner's initial engagement on contractual basis is in conformity with the Board of Governor's resolution authorizing contractual engagement and whether such advertisement sub-serves the constitutional requirement enshrined in Articles 14 and 16 of the Constitution of India. The B.O.G resolution dated 24.12.2005 authorized contractual engagement of Secretarial Assistant in the following terms:

"The contractual engagement would be done through the due process of selection, interview, etc."

19. We find from bare perusal of the Advertisement dated 09.09.2007 that the same contains a stipulation that pay is negotiable. It further provides for relaxation of maximum age criteria in case of exceptional candidates "*with outstanding hands-on experience*". The advertisement does not provide any

procedure for assessment of *inter se* merit, let alone there being any interview. A plain reading of the advertisement reveals that the same preferred appointment of person with hand/on experience meaning thereby that the advertisement was tailor made to make contractual appointment of existing members of staff who were working through agency, including the petitioner. Apparently the advertisement was intended for such purpose and therefore, there was no procedure prescribed for assessment of *inter se* merit of candidates. It is also clear from the records that appointment on contractual basis, made pursuant to the advertisement was without following reservation policy and not against any sanctioned post.

20. It is therefore clear that the petitioner's contractual engagement was without following the procedure laid down in the B.O.G meeting dated 24.12.2005.

21. The petitioner was already working for the institute through an agency therefore, she knew fully well the object and purposes for issuing the advertisement. Pursuant to such appointment on contractual basis in 2007, no claim was made for absorption/regularization. Such claim was orally raised for the first time by the petitioner when the writ petition WP 24205 (W) of 2018, filed for a totally different purpose was disposed of on 13.12.2018. The writ petition was filed assailing the letter dated 16.08.2018 issued by the authorities communicating the terms and conditions to be effective from the date of commencement of

petitioner's fresh contractual appointment with effect from 01.01.2018 till 25.12.2018. At the time of disposal of this writ petition, the petitioners for the first time sought liberty to raise a claim for absorption, about six months prior to attaining the age of superannuation.

22. We, therefore, find that the initial engagement of the petitioner was not in accordance with law. Also there was no sanctioned post on which she was appointed. Her appointment was pursuant to an advertisement but the terms stated in the advertisement were unsustainable as noticed above, and not in terms of Articles 14 and 16 of the Constitution of India. It cannot be said that the recruitment process can be recognized for the purpose of issuing a direction for regularization. We also take note of the facts that the petitioner attained the age of superannuation in May 2019. Considering the above facts and circumstances we find no substance in the petitioner's submission for relying on decision of the apex Court in the case of **Jaggo** (Supra) or **Dharam Singh** (supra).

23. We find force in submission of the learned Senior Counsel representing the respondent relying upon paragraphs 25 and 26 of judgment in the case of **Jaggo** (supra), which reads:

“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.

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 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”.

24. In the dicta noted from the judgment of **Jaggo** (supra); as also decision in the case of **Dharam Singh** (supra), we find that the petitioner's case is factually distinguishable from the two judgments being relied upon. The petitioner has not been able to make out a case for regularization in the facts and

circumstances noted above. We, therefore find no infirmity in the decision of the learned Single Judge in WP NO. 9463 (W) of 2019. The same requires no interference. The appeal is dismissed.

25. Connected application/s if any, also stand dismissed. Interim order/s if any, stands vacated.

26. However, there shall be no order as to costs.

27. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on completion of usual formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)