

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 14298 of 2015

Sri Biswajit Goswami & Ors.

VS.

Secretary (Municipal Affairs), State of WB & Ors.

For the Petitioners : Mr. Indranath Mukherjee,
Mr. Jayanta Banerjee,
Ms. Rukmini Basu Roy.

**For the Opposite Party/
State** : Mr. Avishek Prasad,
Mr. Sourodeep Singha.

Hearing concluded on : 13.12.2024

Judgment on : 14.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ petition has been preferred praying for extending all superannuation benefits to the writ petitioners as admissible under law prescribed by the Government of West Bengal by quashing the order dated 5th November, 2009 passed by the respondent no.2.

2. The writ petitioners' case is that :-

- a.** Petitioners were all **appointed** by an order dated 12th **January, 1994** with effect from 14th January, 1994 as a daily record Group- 'D' Worker on a daily rate of Rs. 12/- only. In the said letter of appointment it was mentioned that the service of the petitioners would be continued till the petitioners were individually absorbed in a substantive vacancy.
- b.** Subsequently the Chairman of the said Municipality herein being the Respondent No. 4 by an order dated 31st May, 1994 under Memo No. HDV/M/770/94 **confirmed** the services of the petitioners to the post of Group- 'D' category **with effect from 1st May, 1994** whereby the pay was fixed at Rs. 450/- per month.
- c.** In terms of the decision taken by the appropriate authority, being the Municipal Authority Services of the petitioners were **confirmed as Group- 'D' Worker with effect from 15th May, 1994** on fixed pay of Rs. 450/- per month and subsequently enhanced the pay was increased to Rs. 800/- per month and gradually it increased to the tune of approximately Rs. 7500/- per month (at present).

- d. Although they are enjoying their salaries as per prescribed rules but the same is being paid from the fund of the Haldibari Municipality and not by the State Government, in consequence whereof if any death occurs before retirement as also after retirement, they shall not receive any superannuation benefit from the State Government.
 - e. That in the same category although 49 employees including the aforesaid writ petitioners were given appointment/and then confirmed to the Group- 'D' post with effect from 15th May, 1994, out of them 16 employees were accommodated to vacancies/new post without taking into account the respective qualification, date of birth etc of the said employees accommodated.
3. By an **order dated 27.06.2006 in WP No.9293W of 2006**, the High Court passed the following direction in respect of employees standing on the same footing as the writ petitioners:-

*“a. All these controversies were set at rest by Justice S.B. Sinha (as his Lordship then was) in the earlier writ petition being W.P. No. 15366(W) of 1997 in His Lordship's order passed on 27th November, 1998 being annexure P-19 to this writ petition at page 56. While disposing of the said writ petition His Lordship **directed the respondents to grant salary to the petitioner by placing them in the***

scale of pay of Group 'D' employee to which they are entitled to since the date of their appointment.

- b. This court is informed that the parties have accepted the said order by not challenging the same before any higher forum. Since the parties have accepted the said order, the parties cannot avoid the implementation of the said order by contending, inter alia, that the Municipal Authority is unable to pay the admissible scale to the petitioners unless the posts are sanctioned by the government.*
- c. Under such circumstances, this court disposes of this writ petition by directing the Municipal Authority to pay the admissible dues of the petitioners in terms of the order passed by S. B. Sinha, J. (as his Lordship then was) on 27th November, 1998 In W.P. No. 15366(W) of 1997 being annexure P-19 to this writ petition at page 56 positively within a period of eight weeks from date.*
- d. It is, however, made clear that in the event the Municipal Authority fails to pay the said dues of the petitioners within the time as indicated above, the Municipal Authority will have to pay the interest @ 10% per annum on the unpaid dues of the petitioners until the entire payment is made to the petitioners in this regard.”*

- 4. Similar order was passed vide an order dated 23.09.2008 in WP No.5969W of 2008. By an order dated 27.09.2009 in WP**

No.5859W of 2009 the respondents were directed to consider the prayer of the writ petitioners herein along with other applicants.

5. By an **order dated 5th November, 2009** which is the order under challenge in the present writ petition, the Director of local bodies, West Bengal rejected the representations of two of the writ petitioners herein on the following findings :-

“The petitioners’ submission is that they are similarly situated with the seven other persons who were absorbed in the supernumerary Gr. - D posts by virtue of the Hon’ble Courts order so they may be absorbed accordingly.

(A) *It appears from the record that the Govt. had earlier accorded approval to the creation of 7 (seven) Gr.-D posts as supernumerary posts and absorbed them there to **with retrospective effect from 15.05.94** under order no. 1109/DLB/J- 506/13/2008 dated 23.05.08 and order no. 2357/DLB/J-506/13-96 dated 05.12.07 as the concerned municipality had no such vacant sanctioned posts of Gr.-D at that material time.*

(B) *According to the prevailing order pertaining to the absorption of casual workers is that casual workers engaged in the municipality upto 31.12.91 and continuing as such, will be absorbed in the sanctioned vacant posts as per the existing approved staff pattern according to*

seniority and qualification against Gr.-C+ Gr. D posts.

(C) In the instant case the petitioners are all post 1991 casual workers.

(D) The instant case involves creation of supernumerary posts with retrospective effect. There is no provision to create supernumerary posts. Hence it is beyond the purview of the Director of Local Bodies to pass order to create the supernumerary posts. Moreover, it will not be justified to create supernumerary posts for want of sanctioned vacant posts only to accommodate the petitioners and this will contravene the provision of law.

In view of the position stated above. I am of the view that the representations of the petitioners in question are not maintainable in conformity with the existing provision/law.

Hence the representation is rejected and disposed of.”

6. Written notes have been filed by the parties along with the judgments relied upon in support of their contentions.
7. The Calcutta High Court in the case of **Rabindra Nath Ghosh & Ors. Vs. The State of West Bengal & Ors.** reported in **2009 SCC OnLine Cal 2017** held as follows:-

“3.

2. Further recruitment of casual and such other categories of workers shall not be normally made. Initial recruitment of such workers, if considered unavoidable by any Employing Authority shall henceforth be invariably be through the Employment Exchanges, as already decided in the case of filling up of vacancies of non-P.S.C. non-promotional posts Ad hoc appointment of persons from the open market may, however, be made for a period not exceeding 15 days to meet any situation of emergent nature. Such ad-hoc appointees will have no claim in future for absorption in the regular establishment under the State Government.

3. Casual and such other categories of workers who have been engaged in a perennial type of work for continuous period of more than three years may be absorbed in the regular establishment on temporary basis existing vacancies, if suitable vacancies are not available necessary steps may be taken by the respective authorities to create the requisite number of posts for the purpose of absorption of such categories of workers in consultation with the Finance Department.

4. Notwithstanding anything contained in the recruitment policy circulars issued by the State Government from time to time 5% of vacancies against the quota of 70% earmarked for recruitment through Employment Exchanges shall be kept reserved for absorption of those casual and such other categories of workers, who are already engaged in perennial type of work and have rendered at least 240 days service in a calendar year but have not completed three years' service as yet.

5. While filling up vacancies in the regular establishments duly qualified seasonal workers who have worked for five years or more in successive seasons shall be considered for appointment by

respective employing Authorities along with the candidates sponsored by Employment Exchanges.

(a). The system of engaging contract labour for aparential type of work by certain State Government Establishments/Undertakings etc shall be abolished in hases. For the purpose of gradual absorption of contract labour in the regular establishments of the Principal Employer necessary steps may be taken by the concerned Employing Authority.

6. Henceforth at the time of appointment of contractors of the terms and conditions shall be that initial recruitment to all categories of staff by the contractors shall invariably be through the Employment Exchanges. In respect of subsisting contracts, contractors may be persuaded to fill up vacancies under them by candidates sponsored through Employment Exchanges:

The above measures will come into force with immediate effect.

Continuation:— Unless there is anything repugnant in the subject or context casual and such other categories such workers would mean casual workers daily rated workers, Master-roll workers and such other categories of persons as may be specified from time to time by Government provisions contained in this Memorandum shall apply to all Departments.

6. In case of any doubt as to interpretation and/or implementation of the decisions contained in this Memorandum, the matter shall be referred to the Labour Department.

*Sd/-
Chief Secretary.”*

6. All those circular letters provide that casual appointees who were appointed for certain period of time, would be regularised in service and at the same time backdoor appointment method of appointment has

been invalidated by those circular letters. Already the recruitment rule is existing in the field long back before issuance of the circular letters in the year 1979 and giving a go-bye to that recruitment rule the State Government intended to regularise service of the casual appointees which is nothing but total breach of Article 14 and 16 of the Constitution of India.

9. *In the instant case, from the averments made by the petitioners, it appears that they were illegal appointees as no recruitment procedures were followed to appoint them initially when they were appointed as casual appointees. The view of Uma Devi (3) (supra) intended to be distinguished by 2 Judges Bench of the Apex Court in the case U.P. State Electricity Board v. Puran Chandra Pandey, reported in (2007) 11 SCC 92 on a finding that as the appointee was working in the organisation for a long period, the Government action should be fair and reasonable and on relying upon case of Maneka Gandhi v. Union of India, reported in AIR 1978 SC 597, a judgment of seven Judges Bench of the Apex Court, allowed regularisation of service. The views of Puran Chandra Pandey (supra) subsequent by came up for consideration to a Bench consisting of Judges in the case Official Liquidator v. Dayanand, reported in (2008) 10 SCC 1 wherein in paragraph 9 the Court expressed a costic remark against the judgment passed in the case Puran Chandra Pandey by holding that the said view expressed by the Court was obiter dicta and no Court or Tribunal or any authority would follow that judgment as it was against the rule a settled by the judgment passed in the case Uma Devi (3) (supra) to this that regularisation of service where appointment has been made in contravention of the statutory rule, is nothing but breach of Article 14 an 16 of the Constitution of India. Said view expressed in paragraph 43 in the case Uma Debi (3) (supra) by the Apex Court. The said view relied upon by the Court the case Indian Drugs and Pharmaceuticals Limited reported 2006 (12) Supple SCC 1; Principal Mehar Chand Polytechnic v. Anu Lamba, reported in (2006) 7 SCC 161; Surendra Prasad Tewari v. U.P. Rajya Krishi Utpadan Mandi Parishad, reported in (2006) 7 SCC 684. In the case Mahadeo Bhan Khilare*

(Mane) v. State of Maharashtra, reported in (2007) 5 SCC 524 the Apex Court held that appointments are void abinitio as are in utter breach of recruitment rule and/or Constitutional scheme of public employment under Article 14 and 16 of the Constitution of India and thereby appointments would be wholly illegal and no regularisation order could be passed by the Court. In *Uma Debi (3) (supra)* the Court held that Article 14 and 16 of the Constitution of India, is the basic feature of the Constitution and regularisation of service of illegal appointees, if is done, that would cause injury to the basic feature of the Constitution and thereby observed that High Court, being the sentinel and guardian of the Constitution should maintain the constitutional mandate properly and when such type of approach to be made for regularisation of service who are appointed illegally without following the recruitment procedures, the same should not be allowed as it would infringe equality clause under Article 14 of the Constitution of India. *Andhra Pradesh S.R.T.C., a Corporation*, issued a circular for regularisation of ad hoc, casual and daily rated workers. This matter came up before the Apex Court and when dealing with the issue, the Apex Court held that the circular letter of the Corporation for regularisation of service on ad hoc, casual and daily rated workers de hors to the Constitutional mandate and it breaches Article 16 and as such no regularisation was permissible. The Court quashed the order of regularisation as well as the circular letter issued by the SRTC for regularisation. Reliance is placed to the judgment passed in the case *Accounts Officer, APSRTC v. K.V. Ramana*, reported in (2007) 2 SCC 324. Even recently the Apex Court has quashed the circular letter issued by the Railway Board relating to regularising the service of “permanent way mate” as Group ‘C’ employee, promotional post of the Group ‘D’ employee, by holding that regularisation is not a way for appointment.....”

8. The Supreme Court in the case of **Vinod Kumar & Ors. Etc. vs. Union of India & Ors., (Civil Appeal Nos. 5153-5154 of 2024), on 30th January, 2024**, held as follows :-

“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

“53. One aspect needs to be clarified. There may be 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] and referred to in para 15 above, 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 this Court in the cases above referred to and in the light of this 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 this date. We 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.”.....”

9. The Supreme Court in the case of **University of Delhi vs. Delhi University Contract Employees, CIVIL APPEAL NO. 1007 OF 2021 with CIVIL APPEAL NO. 1008 OF 2021, on 25th March, 2021** held as follows :-

“.....7. The decision of the Constitution Bench of this Court in Umadevi was pronounced on 10.04.2006 by which time, the earliest contract employees had put in only 3-4 years of service and most of the contract employees were engaged after the decision in Umadevi.

In paragraphs 47, 49 and 53 of the decision in Umadevi, this Court stated:-

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate

expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

... ..

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

... ..

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal

appointments) as explained in S.V. Narayanappa⁸, R.N. Nanjundappa⁹ and B.N. Nagarajan¹⁰ and referred to in para 15 above, 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 this Court in the cases abovereferred to and in the light of this 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 this date. We 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 added)

12. It is true that, as on the day when the judgment in Umadevi was delivered by this Court, the contract employees had put in just about 3 to 4 years of service. But, as of now, most of them have completed more than 10 years of service on contract basis. Though the benefit of regularization cannot be granted, a window of opportunity must be given to them to compete with the available talent through public advertisement. A separate and exclusive test meant only for the contract employees will not be an answer as that would confine the zone of consideration to contract employees themselves. The modality suggested by the University, on the other hand, will give them adequate chance and benefit to appear in the ensuing selection.

13. We, therefore, direct that all the concerned contract employees engaged by the University be afforded benefits as detailed in paragraphs 6 and 7 of the affidavit dated 09.03.2021 with following modifications:

(a) The benefit of age relaxation as contemplated in paragraph 6 of the affidavit without any qualification must be extended to all the contract employees.

(b) In modification of paragraph 7 of the affidavit, those employees who were engaged in the year 2011 be given the benefit of 10 marks in the ensuing selection process while for every additional year that a contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given. In other words, if a contract employee was engaged for the first time in the year 2010, he shall be entitled to the benefit of 11 marks, while one engaged since 2003 shall be given 18 marks, as against the appointee of 2011 who will have the advantage of only 10 marks. The contract appointees of 2012 and 2013 will have the advantage of 9 and 8 marks respectively.

(c) The Public Notice inviting applications from the candidates shall specifically state that the advantage in terms of the order passed by this Court would be conferred upon the contract employees so that other candidates are put to adequate notice.

(d) All the contract employees shall be entitled to offer their candidature for the ensuing selection in next four weeks and in order to give them sufficient time to prepare, the test shall be undertaken only after three months of the receipt of applications from the candidates.....”

10. In **Jaggo vs Union of India & Ors., in civil appeal no. of 2022 arising out of SLP (C) No. 5580 of 2024, decided on 20th December, 2024**, the Supreme Court held:-

“10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted

service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their **initial appointments as part-time or contractual**. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas—a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as "part-time workers," the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that

subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

14. The abrupt termination of the appellants' services, following dismissal of their Original Application before the Tribunal, was arbitrary and devoid of any justification. The termination letters, issued without prior notice or explanation, violated fundamental principles of natural justice. It is a settled principle of law that even contractual employees are entitled to a fair hearing before any adverse action is taken against them, particularly when their service records are unblemished. In this case, the appellants were given no opportunity to be heard, nor were they provided any reasons for their dismissal, which followed nearly two decades of dedicated service.

15. Furthermore, the respondents' conduct in issuing tenders for outsourcing the same tasks during the pendency of judicial proceedings, despite a stay order from the Tribunal directing maintenance of status quo, reveals lack of bona fide intentions. Such actions not only contravened judicial directives but also underscored the respondents' unwillingness to acknowledge the appellants' rightful claims to regularization.

16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

17. As for the argument relating to educational qualifications, we find it untenable in the present

context. The nature of duties the appellants performed- cleaning, sweeping, dusting, and gardening- does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades.

Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

18. *The appellants have also established that individuals with lesser tenure or comparable roles were regularized by the respondents. The counsel for the appellants had submitted a seniority list for employees working as the Multi- Tasking Staff published by the Respondent Department on 04.03.2024 wherein the following employees were a part of the staff without the required educational qualification:*

S. No.	Name	Educational Qualification	Date of Continuous CWC Service	Temporary or Permanent posts	Category
1.	Krishna s/o Lt. Khajan Singh	Illiterate	26.07.1988	Permanent	SC
2.	Naresh Devi w/o Lt. Surendra Kumar	Illiterate	29.10.1991	Permanent	Gen
3.	Shiv Kumar s/o Lt. Pratap Singh	Illiterate	08.09.1994	Permanent	SC
4.	Radhe Shyam s/o Lt. Sadhu Ram Maurya	Illiterate	30.05.2012	Permanent	OBC
5.	Raju s/o Shri	Illiterate	12.07.1994	Permanent	SC

	Banshi Lal				
6.	Shahjad Ali s/o Naushad Ali	Illiterate	01.07.2010	Permanent	Gen
7.	Punam w/o Lt. Raj Kumar	Illiterate	21.09.2015	Permanent	SC
8.	Nirmala w/o Lt. Raju	Illiterate	02.02.2022	Temporary	SC

A bare perusal of the aforementioned list shows the preferential treatment accorded to these individuals, despite their shorter service durations and no educational qualification. This exemplifies discriminatory behaviour and lack of uniformity in the respondent department's approach. Such disparity violates the principles of equality enshrined in Articles 14 and 16 of the Constitution of India and cannot be sustained in law.

19. *It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.*

20. *It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements.*

However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time,

transform what was initially ad-hoc or temporary into a scenario demanding fair regularization.

In a recent judgement of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.⁵, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgement have been reproduced below:

"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case."

21. *The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did*

not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. *The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment.*

Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. *The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration⁶ encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.*

24. *The landmark judgement of the United State in the case of Vizcaino v. Microsoft Corporation⁷ serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees.*

The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

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 longterm 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.

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."

- 11. In the present case,** it appears from the order under challenge dated 05.11.2009, that 7 (seven) persons similarly placed as the petitioners were absorbed in the supernumerary Group-D posts with effect from 15.05.1994, by virtue of the Hon'ble Courts order, on the Govt. according approval to the creation of said 7 (Group-D) supernumerary posts.

12. The petitioners herein though were appointed on 12th January, 1994 with effect from 14th January, 1994 and confirmed on and from 15.05.1994, were not absorbed to the said supernumerary posts created, even though they had already put in more than 10 years of service. ***(Uma Devi (Supra))***
13. There has thus been clearly **selective application** in this case, used against the petitioners herein. ***(Jaggo vs Union of India & Ors. (Supra))***
14. The petitioners herein have been **continuously employed** for 30 years, since **January, 1994** and were **confirmed** to the said post (Group-D) **since May, 1994** and are similarly placed as the petitioners in:-
- (a) WP 9293W of 2006, order dated 27.06.2006
- (b) WP 15366 (W) of 1997 (order dated 27th November, 1998).
- (c) WP 5969W of 2008 (order dated 23.09.2008).
- (d) Those (7) absorbed in the supernumerary (Group-D) posts by virtue of Hon'ble Courts order and Govt.'s approval for creation of the said posts.
15. **In the order under challenge in this case**, the respondent authorities have admitted the absorption of candidates standing

on similar footing as that of the petitioners by virtue of Hon'ble Courts order.

- 16. The petitioners herein have also rendered indispensable services over decades (30 years) to the organization's functioning. There is also no evidence to suggest that their entry was through any illegal route/manner.**
- 17.** The contention in the order under challenge that the petitioners are all employed post 1991 has no substance as the seven (7) employer absorbed to the supernumerary (Group-D) posts were all employed post 1991 and were similarly placed as the petitioners herein.
- 18.** In view of the guidelines laid down in the judgments relied upon, the State respondent is now duty bound to regularize the services of the petitioners at once and extend all post retiral benefits/superannuation benefits to the petitioners herein on their superannuation. *(Jaggo vs Union of India & Ors.(Supra) (paragraphs 13, 20, 26, 28))*
- 19. The writ petition being WPA 14298 of 2015 is thus allowed.**
- 20.** The order dated 5th November, 2009 passed by the respondent no.2, **is hereby set aside/quashed.**

21. The State shall regularize the services of the petitioners at once and extend all post retiral benefits/superannuation benefits to the petitioners herein on their superannuation within 60 days from the date of this order.
22. All connected applications, if any, stand disposed of.
23. Interim order, if any, stands vacated.
24. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]