

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 19114 of 2019

Gadadhar Rana

-Vs-

The State of West Bengal & Ors.

For the Petitioner	: Mr. Sankha Biswas
For the State	: Ms. Jhuma Chakraborty Mr. Pariksshit Goswami
For the Respondent No.6	: Mr. Rahul Kumar Saha
Heard on	: 14.08.2025
Judgment on	: 02.12.2025
Uploaded on	: 02.12.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner has approached this Court assailing the persistent inaction of the respondent authorities in regularizing his service through absorption as Panchayat Karmee in the Panchayat and Rural Development, despite more than two decades of uninterrupted, unblemished and continuous engagement being appointed as casual worker at Mahata Gram Panchayat on and from 1st of November, 1999.
2. Pursuant to a formal joining report submitted in response to a communication issued by the Panchayat on 28.10.1999, a resolution of the

Gram Panchayat dated 13.12.1999 unanimously approved the appointment of the petitioner as a casual worker, and ever since, his discharge of services was devoid of any allegation or adverse remark.

3. The petitioner asserted his service had been regularized and the remuneration of the petitioner was not enhanced during the course of nearly 20 years of service as notified by the State Government from time to time. Repeated representations by the petitioner to the District Panchayat and Rural Development Officer, Purba Bardhaman, the latest being dated 13.08.2019. All such entreaties remained disregarded and unobserved. The grievance being unaddressed compelled the petitioner to invoke the writ jurisdiction of this Court.
4. The petitioner further referred to various Government notifications ranging on and from 16.09.2011 to 08.02.2019 whereby though the remuneration of the casual workers had been enhanced, the petitioner was not accorded with such benefit of increment. The Assistant Secretary, Government of West Bengal, augmented the remuneration of casual workers who had been enlisted in the year 2007, 2008, 2009 and 2010 to Rs.16,500/-, Rs.18,000/- and Rs.19,000/- respectively, barring the petitioner.
5. The petitioner serving as a casual worker continued to receive monthly salary of Rs.7,000/- in non-compliance of the Government notifications without enuring the benefit of supplement as aforesaid. The petitioner was deprived of such gain for the reason to have been permitted to join as Panchayat Karmee on the ground of compassionate appointment on the premise of his father being a regular employee of Mahata Gram Panchayat

been declared medically unfit. Secondly, the petitioner had been working for almost two decades as Panchayat Karmee on casual basis. According to the petitioner, his non-regularization and/or non-absorption in service violated his right protected under Article 14 and 16 of the Constitution of India.

6. The Learned Advocate representing the petitioner submitted the actions and omissions of the respondent authorities particularly of the District Panchayat and Rural Development Officer, Purba Bardhaman were neither supported by facts nor sustainable in law. The petitioner had devoted considerable part of his life in Panchayat service with the legitimate expectation of absorption in the regular establishment. The denial of regularization, despite decades of services and sacrifice is characterized as wholly unreasonable, arbitrary and in violation of Article 14 and 16 of the Constitution.

7. The Learned Advocate representing the petitioner relied upon the following decisions:-

- i. In ***State of Haryana and Ors. Vs. Piara Singh Ors.***¹, the Hon'ble Supreme Court held as follows:-

“21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The

¹(1992) 4 SCC 118

court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principles relevant in this behalf are stated by this Court in several decisions, of which it would be sufficient to mention two decisions having a bearing upon the issue involved here. They are *Dharwad Distt. P.W.D. Literate Daily Wage Employees Association v. State of Karnataka* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902] and *Jacob M. Puthuparambil v. Kerala Water Authority* [(1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697 : 1990 Supp (1) SCR 562] . In the first case, it was alleged that about 50,000 persons were being employed on daily-rated or on monthly-rated basis over a period of 15 to 20 years, without regularising them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for

such employment. In that view of the matter, following directions were given, after reviewing the earlier decisions of this Court elaborately: (SCC p. 408, para 23)

“2. From amongst the casual and daily rated employees who have completed ten years of service by December 31, 1989, 18,600 shall immediately be regularised with effect from January 1, 1990 on the basis of seniority-cum-suitability.

There shall be no examination but physical infirmity shall mainly be the test of suitability.

3. The remaining monthly rated employees covered by the paragraph 1 who have completed ten years of service as on December 31, 1989 shall be regularised before December 31, 1990, in a phased manner on the basis of seniority-cum-suitability, suitability being understood in the same way as above.

4. The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 31, 1997.

5. At the point of regularisation, credit shall be given for every unit of five years of service in excess of ten years and one additional increment in the time scale of pay shall be allowed by way of weightage.

There was a direction that the claims on other heads would be considered at the time of final disposal. We have come to the conclusion that apart from these reliefs no other would be admissible.”

- ii. In **Secretary, State of Karnataka and Ors. Vs. Uma devi and Ors.**², the Hon’ble Supreme Court held as follows:-

²(2006) 4 SCC 1

“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 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.”

- iii. In **State of Karnataka and Ors. Vs. M.L. Kesari and Ors.**³, the Hon’ble Supreme Court held as follows:-

³2010(9) SCC 247

“6. This Court in *Umadevi (3)* [(2006) 4 SCC 1] further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below: (SCC p. 42, para 53)

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, AIR 1967 SC 1071 : (1967) 1 SCR 128]*, *R.N. Nanjundappa [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409]* and *B.N. Nagarajan [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4]* 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.”

7. *It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3) [(2006) 4 SCC 1] , 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.*

8. *Umadevi (3) [(2006) 4 SCC 1] casts a duty upon the Government or instrumentality concerned, to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi (3) [(2006) 4 SCC 1] directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-4-2006).*

...

11. *The object behind the said direction in para 53 of Umadevi (3) [(2006) 4 SCC 1] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date*

of decision in Umadevi (3) [(2006) 4 SCC 1] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3) [(2006) 4 SCC 1]] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) [(2006) 4 SCC 1] or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) [(2006) 4 SCC 1] as a one-time measure.

12. *These appeals have been pending for more than four years after the decision in Umadevi (3) [(2006) 4 SCC 1] . The appellant (Zila Panchayat, Gadag) has not considered the cases of the respondents for regularisation within six months of the decision in Umadevi (3) [(2006) 4 SCC 1] or thereafter.*

13. *The Division Bench of the High Court has directed that the cases of the respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi (3) [(2006) 4 SCC 1] , is that the Zila Panchayat, Gadag should now undertake an exercise within six months, as a general one-time regularisation exercise, to find out whether there are any daily-wage/casual/ad hoc employees serving the Zila Panchayat and if so*

whether such employees (including the respondents) fulfil the requirements mentioned in para 53 of Umadevi (3) [(2006) 4 SCC 1] . If they fulfil them, their services have to be regularised. If such an exercise has already been undertaken by ignoring or omitting the cases of Respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one-time exercise within three months. It is needless to say that if the respondents do not fulfil the requirements of para 53 of Umadevi (3) [(2006) 4 SCC 1] , their services need not be regularised. If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts.”

iv. In **Amarendra Kumar Mohapatra and Ors. Vs. State of Orissa and Ors.**⁴, the Hon’ble Supreme Court held as follows:-

“43. *As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka v. M.L. Kesari [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , has examined that question and explained the principle regarding regularisation as enunciated in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . The decision in that case summed up the following three essentials for regularisation: (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby*

⁴(2014)4 SCC 583

qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage: (M.L. Kesari case [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , SCC p. 250)

“7. It is evident from the above that there is an exception to the general principles against ‘regularisation’ enunciated in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in a 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.”*

v. In **State of Jharkhand and Ors. Vs. Kamal Prasad and Ors.**⁵, the Hon’ble Supreme Court held as follows:-

“14. The Division Bench of the High Court after referring to State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , has clearly held that if a person has served for 10 years or more, then it is the duty of the State Government to consider his case for regularisation in the post. The

⁵(2014) 7 SCC 223

said conclusion came to be reached by relying on Articles 309, 14, 16 of the Constitution of India. Relying upon *Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]* , the High Court has further referred to the judgment in *State of Karnataka v. M.L. Kesari [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826]* which is considered by this Court and this Court has clearly held that *Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]* casts a duty upon the State Government to take steps to regularise the services of those irregularly appointed appointees, who had served for more than 10 years without the benefit or protection of any interim order. Further in the said case, this Court has declared that it has been clearly ordered that one-time settlement/measure should be taken within six months i.e. from 10-4-2006. With reference to the aforesaid decision the learned Senior Counsel appearing on behalf of the respondent employees placed reliance upon Article 142 of the Constitution in support of the submission that order of the Supreme Court be respected and implemented in its true meaning and spirit. Therefore, the Division Bench of the High Court accepted the same and came to the conclusion that the claims of the respondent employees for regularisation in their posts are fit cases and they became unfortunate only because of the creation of the State of Jharkhand over which the employees had no control and could not have prevented creation of the State of Jharkhand and because of that reason only, one State cannot take a different stand with respect to the employees appointed by the same process. The State Government cannot throw the employees jobless after 30 years of their continuous service in public employment guaranteed under Article 16 of the Constitution, which would result in great injustice since their source of income will be taken away and thereby the employees and their families will suffer due to the arbitrary action of

the State Government of Jharkhand which deprived a person of life and liberty guaranteed under Articles 19 and 21 of the Constitution of India.”

- vi. In ***Amarkant Rai Vs. State of Bihar and Ors.***⁶, the Hon’ble Supreme Court held as follows:-

“2. Brief facts which led to the filing of this appeal are as follows : the appellant was appointed temporarily in Class IV post of night guard, on daily wages vide office order dated 4-6-1983 issued by the Principal, Ramashray Baleshwar College (for short “the College”), Dalsang Sarai, affiliated to Lalit Narayan Mithila University (for short “the University”), Bihar. The University vide letter dated 4-7-1985 took a decision to regularise the persons who worked for more than 240 days, and as per the letter dated 30-3-1987, as per which employees who have been working for a period for more than one year need to be regularised. Thereafter, the Additional Commissioner-cum-Secretary, Bihar passed a settlement dated 11-7-1989 and forwarded a copy of the same to the Vice-Chancellors of the universities, wherein it was stated that the services of employees working in educational institutions as per the staff pattern, can be regularised, further imposing a condition that new appointments against the vacancies present and in future should not at all be done. The Principal, Ramashray Baleshwar College requested the Registrar of the University to regularise the services of the appellant vide letter dated 7-10-1993; but the Registrar passed an order of termination dated 1-3-2001. Writ Petition No. 9809 of 1998 was preferred by few similarly placed daily-wagers in the High Court. As per the directions issued by the High Court, the Registrar of the University vide letter dated 22-12-2001 allowed all

⁶(2015) 8 SCC 265

the daily-wagers to resume their jobs from 3-1-2002 and the appellant also joined his duties.

- 3.** *The Principal of the College again vide letters dated 8-1-2002 and 12-7-2004 recommended for absorption of the appellant against the two vacant posts. In pursuance of the High Court order in Chandra Sharma v. State of Bihar [CWJC No. 5774 of 2000, order dated 13-4-2007 (Pat)] , he was given opportunity to appear before the three-member Committee constituted by the Vice-Chancellor for consideration of his claim for regularisation of services, but the same was rejected as it was not in consonance with the Recruitment Rules laid down by the Constitution Bench judgment in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] and the same was informed to the appellant by the Registrar vide letter dated 25-11-2007. The appellant approached the High Court by way of Writ Petition (Civil) No. 545 of 2009 and the same was dismissed vide order dated 26-8-2011 [Kamal Rai v. State of Bihar, CWJC No. 545 of 2009, decided on 26-8-2011 (Pat)] observing that it is a clear case of violation of Section 10(6) and Section 35 of the Bihar State Universities Act, 1976 and there is no illegality in the order passed by the three-member Committee. Aggrieved by it, the appellant preferred LPA No. 1312 of 2012 which was dismissed [LPA No. 1312 of 2012, order dated 20-2-2013 (Pat), 2013 SCC OnLine Pat 775] in limine confirming the order dated 26-8-2011 [Kamal Rai v. State of Bihar, CWJC No. 545 of 2009, decided on 26-8-2011 (Pat)] . In this appeal, the appellant seeks to assail the above order.*

...

- 13.** *In our view, the exception carved out in para 53 of Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or*

bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.

14. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar).”

vii. In **Narendra Kumar Tiwari and Ors. Vs. State of Jharkhand and**

Ors.⁷, the Hon’ble Supreme Court held as follows:-

“4. Having heard the learned counsel for the parties and having considered the decision of the Constitution Bench in *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] as well as the subsequent decision of this Court explaining *Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] in *State of Karnataka v. M.L. Kesari* [*State of Karnataka v. M.L. Kesari*, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826], we are of the view that the High Court has erred in taking an impractical view of the directions in *Umadevi (3)* [*State*

⁷(2018) 8 SCC 238

of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] as well as its consideration in Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] .

5. *The decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily-wage workers and continuing with them indefinitely. In fact, in para 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.*
6. *The concept of a one-time measure was further explained in Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] in paras 9, 10 and 11 of the Report which read as follows: (SCC pp. 250-51, paras 9-11)*
 - “9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. *At the end of six months from the date of decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , are so considered.*

11. The object behind the said direction in para 53 of *Umadevi (3)* [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi (3)* [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi (3)* [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in *Umadevi (3)* [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in *Umadevi (3)* [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] as a one-time measure.”

7. The purpose and intent of the decision in *Umadevi (3)* [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those

who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid.

...

10. *Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.”*

viii. In **Jaggo Vs. Union of India and Ors.**⁸, the Hon’ble Supreme Court held as follows:-

“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

⁸2024 SCC Online SC 3826

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.”

8. A conjoint reading of the aforesaid decisions referred to situations where an employee had served continuously for ten years or more in a duly sanctioned post without the protection of any interim order and possessed minimum qualifications, the State had a constitutional duty to consider regularization as an one time measure.
9. The Supreme Court has consistently held that the State cannot exploit long years of service, nor keep a worker in a perpetual casual status, as such conduct violated the provision of Article 14 and 16 of the Constitution of India and offended the rule of law.
10. The Learned Advocate representing the respondent submitted the petitioner's appointment was impermissible being contrary to the statutory framework. It was further contended (a) the petitioner's engagement was facilitated by the Pradhan of Mahata Gram Panchayat substituting his father who was seriously ill prior to his retirement, (b) no formal selection test, advertisement or competitive process preceded the appointment, (c) no leave petition was ever filed by the father for the period 01.11.1999 to 31st of January, 2000, the date of his superannuation, (d) the petitioner's

appointment letter portrayed his engagement was not against a sanctioned post nor pursuant to Gram Panchayat Karmee Recruitment Rules which required selection through a District Level Selection Committee comprising the Sabhadhipati as Chairman and District Magistrate as Co-Chairman, (e) prior approval of the State Government was not obtained as mandated by the West Bengal Panchayat Act, 1973 and the Panchayat Administrative Rules, 2014.

11. It was further submitted on 15.09.2017, the District Magistrate issued a letter to the Director of Civil Defence sponsoring the Civil Defence Volunteers to be engaged as Security Personnel on contractual basis for certain months. The petitioner's appointment was granted without obtaining prior approval of the State Government violating the procedural dictum and in contravention of the Recruitment Rules whereby it was entirely illegal obliterating the possibility of the petitioner's regularization or absorption into the service in absence of proper selection process as well as sanctioned post.
12. The stark dichotomy distinguishes the petitioner's long service-uninterrupted, faithful and rendered for societal work to generate equitable and legitimate expectation and a plea for constitutional fairness. Contrarily, the appointment was granted without adherence to statutory Recruitment Rules, without prior approval from the State Government and not pursuant to a sanctioned post.
13. The petitioner urged this Court to treat two decades of service as a shield against infirmities at the inception while the respondents contended an

illegal appointment at the threshold could not ripen into legality through length of service.

14. The petitioner raised the following issues for adjudication:-

- i. whether the petitioner's appointment by the competent authority was consequent to observation of applicable Rules and Regulations or pursuant to compassionate absorption of casual workers,
- ii. whether the petitioner's appointment failing to comply procedural norms can still be regarded as lawful in view of his long unhindered service,
- iii. whether non-compliance of selection protocols renders the appointment illegal or whether long years of service clothe it with legitimacy,
- iv. whether the Pradhan acting in response to the financial distress of the petitioner's family due to the father's illness, could have appointed him in his personal capacity or for societal or community need,
- v. whether continued disbursement of salary by the Pradhan from Panchayat funds establish a public law engagement or an illegal one,
- vi. whether failure to regularize the petitioner violated the petitioner's constitutional guarantees under Articles 14 and 16 of the Constitution of India.

15. According to Section 86 of the West Bengal Panchayat Samiti Administration Rules, 2008 states as follows:-

“(1) Except for with the prior approval of the state government, a panchayat Samiti shall neither create nor abolish any post, nor revise the scale of pay of any of its employees or any cadre or group of employees. (2) If in violation of the provisions of the first provision of sub section (2) of section 119 and sub rule (1), a panchayat samiti, on any occasion, creates or abolishes any post or revise the scale of any of its employees, such creation or abolition of post or such revision of scale of pay shall be void ab initio and no liability, financial or otherwise, on account of any such decision shall devolve upon the state government.”

16. The aforesaid provision stipulates no Panchayat Samiti can create or abolish posts, revise pay or grant appointment without prior approval from the State Government. Any such appointment in disregard of the statutory requirement is void *ab initio*. No liability financial or otherwise can accordingly devolve upon the State Government to comply.

17. Section 20 of the West Bengal Panchayat Act, 1973 states as follows:-

“20. (1) *A Gram Panchayat shall also perform such other functions as the State Government may assign to it in respect of-*

- (a) primary, social, technical, vocational, adult or non-formal education;*
- (b) rural dispensaries, health centres and maternity and child welfare centres;*
- {c) management of any public ferry under the Bengal Ferries Act, 1885;*
- (d) irrigation including minor irrigation, water management and watershed . development;*
- (e) agriculture including agricultural extension and fuel and fodder;*
- (f) care of the infirm and the destitute;*
- (g) rehabilitation of displaced persons;*

- (h) improved breeding of cattle, medical treatment of cattle and prevention of cattle disease;*
 - (i) its acting as a channel through which Government assistance should reach the villages;*
 - (j) bringing waste land under cultivation through land improvement and soil conservation;*
 - (k) promotion of village plantations, social forestry and farm forestry;*
 - (l) arranging for cultivation of land lying fallow;*
 - (m) arranging for co-operative management of land and other resources of the village;*
 - (n) assisting in the implementation of land reform measure in its area;*
 - (o) implemeritation of such schemes as may be formulated or performance of such acts as may be entrusted to the Gram Panchayat by the State Government;*
 - (p) field publicity on matters connected with development works and other welfare measures undertaken by' the State Government;*
 - (q) minor forest produce;*
 - (r) rural housing programme;*
 - (s) rural electrification including distribution of electricity;*
 - (t) non-conventional energy sources; and*
 - (u) women and child development.*
- (2)** *If the State Government is of opinion that a Gram Panchayat has persistently ma_de default in the performance of any of the functions assigned to it under sub-section (!), the State Government may, after recording its reasons, withdraw such function from such Gram Panchayat.”*

18. In **Siraj Ahmad vs. State of Uttar Pradesh and Anr.**⁹, the Hon’ble Supreme Court held as follows:-

⁹Civil Appeal No.9412 of 2019

“... **11.** This court in the case of *State of M.P. and ors. vs. Lalit Kumar Verma*³, after considering the Judgment of Constitution Bench of this Court in the case of *Secy., State of Karnataka vs. Uma Devi*⁽³⁾, observed thus: “**12.** The question which, thus, arises for consideration, would be: Is there any distinction between “irregular appointment” and “illegal appointment”? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is “State” within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.”

12. It can thus be seen that this court has held that the distinction between irregular appointment and illegal appointment is clear. It has been held that in the event appointment is made in total disregard to the constitutional scheme and the recruitment rules framed by the employer, where the employer is a “State” within the meaning of Article 12 of the Constitution of India, the recruitment will be illegal one. It has however been held, that where although, substantial compliance with the constitutional scheme, as also the rules have been made, the appointment would become irregular in as much as the some provisions of some rules have been adhered to.

13. Subsequently another bench of this Court in the case of *State of Karnataka and Others vs. M. L. Kesari and Others*⁵ also had an occasion to consider the issue. The Court observed thus :

“**7.** It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in *Umadevi* (3) [(2006) 4 SCC 1] , 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.”*

14. *This court held, that where the appointment are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointment will be considered to be illegal. However, when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”*

19. In **Pawan Kumar Tiwary and Ors. vs. Jharkhand State Electricity**

Board and Ors.¹⁰, the Hon’ble Supreme Court held as follows:-

“... 25. This Court has in several decisions, including State of Bihar v. Upendra Narayan Singh and Others , emphasized that when appointments are found to be irregular, the inquiry must focus on whether such irregularity amounts to illegality, and whether the

¹⁰Special Leave Petition (Civil) No(s).26860-26863 of 2023

appointee had any role or knowledge of the deviation. If not, and the appointee was otherwise eligible, qualified, and appointed against a sanctioned vacancy, there is no justification for nullifying such appointment. The present appellants, as evidenced by record, fulfilled all eligibility conditions, were appointed within the sanctioned strength, and underwent the requisite selection process.

26. *It is here that the doctrine of severability assumes great significance. The rule is grounded in equity and legal logic: where bad can be separated from good, the good must not perish with the bad. The doctrine, though largely applied in constitutional and statutory interpretation, has gained considerable traction in service jurisprudence where a set of appointments are sought to be invalidated en masse.*

27. *The doctrine of severability is not merely a tool of constitutional adjudication but a principle of fairness. In service law, it protects deserving employees from the fallout of administrative missteps not attributable to them.*

...

31. *The jurisprudence around irregular versus illegal appointments must not be blurred. An irregular appointment is one where procedure is not strictly followed but the appointee is otherwise qualified and the post is sanctioned. An illegal appointment, on the other hand, is void ab initio, such as where the appointee is ineligible or the post does not exist. When appointments are questioned on grounds of irregularity, the inquiry must not end with detecting the infirmity but must proceed further to distinguish those whose appointments are unimpeachable. Justice demands separation, not erasure.”*

20. In ***The State of Bihar vs. Kriti Narayan***¹¹, the Hon’ble Supreme Court held as follows:-

¹¹Civil Appeal No.8649 of 2018

“... 15. In some of the LPAs the Division Bench appears to have followed paragraph 11 in M.L. Kesari (supra) for directing regularisation of service without considering the observations contained in paragraph 7 of the judgment. In paragraph 11, it was observed that "the true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation within six months of the decision in Umadevi (3) as a one-time measure". However, in paragraph 7 after considering [Umadevi](#) (supra) this Court has categorically held that for regularisation, the appointment of employee should not be illegal even if irregular.

"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." (Emphasis supplied)

16. In *State of Orissa and Anr. v. Mamata Mohanty*, (2011) 3 SCC 436, this Court has held that once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage. It was held thus:

"68(i) The procedure prescribed under the 1974 Rules has not been followed in all the cases while making the appointment of the respondents/ teachers at initial stage. Some of the persons had admittedly been appointed merely by putting some note on the notice board of the College. Some of these teachers did not face the interview test before the Selection Board. Once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage".

17. In the instant cases the writ petitioners have filed the petitions before the High Court with a specific prayer to regularize their service and to set aside the order of termination of their services. They have also challenged the report submitted by the State Committee. The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their

services by invoking para 53 of the judgment in [Umadevi](#) (supra) does not arise. Since the appointment of the petitioners is *ab initio* void, they cannot be said to be the civil servants of the State.”

21. In **State of M.P. and Ors. vs. Lalit Kumar Verma**¹², the Hon’ble Supreme Court held as follows:-

“... **12.** The question which, thus, arises for consideration, would be: Is there any distinction between “irregular appointment” and “illegal appointment”? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is “State” within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

13. In *National Fertilizers Ltd. v. Somvir Singh* [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152] it has been held: (SCC pp. 500-01, paras 23-25)

“23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

24. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were

¹²(2007) 1 SCC 575

irregular as explained in State of Mysore v. S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, (1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa v. T. Thimmiah [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409] and B.N. Nagarajan v. State of Karnataka [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] wherein this Court observed: [Umadevi (3) case [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , SCC p. 24, para 16]

‘16. In B.N. Nagarajan v. State of Karnataka [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] this Court clearly held that the words “regular” or “regularisation” do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.’

25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service.”

14. *In R.S. Garg v. State of U.P. [(2006) 6 SCC 430 : 2006 SCC (L&S) 1388 : (2006) 7 Scale 405] it has been held by this Court: (SCC p. 448, para 24)*

“24. The original appointment of the 3rd respondent being illegal and not irregular, the case would not come within the exception carved out by the Constitution Bench. Furthermore, relaxation, if any, could have been accorded only in terms of Rule 28 of the Rules; Rule 28 would be attracted when undue hardship in any particular case is caused. Such relaxation of Rules shall be permissible only in consultation with the Commission. It is not a case where an undue hardship suffered by the 3rd respondent could legitimately be raised being belonging to a particular class of employee. No such case, in law

could have been made out. It, in fact, caused hardship to other employees belonging to the same category, who were senior to him; and thus, there was absolutely no reason why an exception should have been made in his case.”(See also *State of Gujarat v. Karshanbhai K. Rabari* [(2006) 6 SCC 21 : 2006 SCC (L&S) 1265] .)

15. Yet, recently in *Principal, Mehar Chand Polytechnic v. AnuLamba* [(2006) 7 SCC 161 : 2006 SCC (L&S) 1580] it was held: (SCC p. 171, para 35)

“35. The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time-bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturalists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus.”

16. We may, however, notice that in *Mineral Exploration* [(2006) 6 SCC 310 : 2006 SCC (L&S) 1318] the attention of this Court was not drawn to the earlier precedents including a three-Judge Bench of this Court in *B.N. Nagarajan v. State of Karnataka* [*B.N. Nagarajan v. State of Karnataka*, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] .

17. The Labour Court, Industrial Tribunal as also the High Court, therefore, were not correct in directing regularisation of service of the respondent.”

22. In ***State of Madhya Pradesh and Anr. vs. Mohd. Ibrahim***¹³, the Hon’ble Supreme Court held as follows:-

¹³(2009) 15 SCC 214

*“... **12.** Appellant 1 is “State” within the meaning of Article 12 of the Constitution of India. In making offers of public appointment, it is necessary to follow the constitutional scheme laid down in Articles 14 and 16 of the Constitution of India. For the purpose of legal and valid recruitment, the provisions of the recruitment rules are required to be complied with. An appointment through side door being an appointment in violation of Articles 14 and 16 of the Constitution of India would be illegal. It has been so held by a Constitution Bench of this Court in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] . (See also Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] and State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019 : (2009) 4 Scale 282] .)*

***13.** The contention raised on behalf of the appellants is, furthermore directly covered by a decision of this Court in State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] . The respondent therein was appointed on daily wages. His recruitment was not made in terms of the statutory rules. Even no offer of appointment was issued. On the premise that he had worked continuously for a period of more than six months, an award was passed by the Labour Court directing his classification on a permanent basis. The High Court also dismissed the writ petition filed by the appellants.*

***14.** This Court in Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] opined: (SCC pp. 581 & 583, paras 12 & 17-18)*

“12. The question which, thus, arises for consideration, would be: Is there any distinction between ‘irregular appointment’ and ‘illegal appointment’? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is ‘State’ within the meaning of Article 12 of the

Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

17. The Labour Court, Industrial Tribunal as also the High Court, therefore, were not correct in directing regularisation of service of the respondent.”

23. In **Government of Andhra Pradesh and Ors., Vs. K. Brahmanandam and**

Ors.¹⁴, the Hon’ble Supreme Court held as follows:-

“... 15. The equality clause contained in Articles 14 and 16 of the Constitution of India, it is trite, must be scrupulously followed. The court ordinarily would not issue a writ of or in the nature of mandamus for regularisation of the service of the employee which would be violative of the constitutional scheme.

16. Appointments made in violation of the mandatory provisions of a statute would be illegal and, thus, void. Illegality cannot be ratified. Illegality cannot be regularised, only an irregularity can be.

17. The said legal principle has been enunciated by a Constitution Bench of this Court in Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , para 53 whereof reads as under: (SCC p. 42)

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, AIR 1967 SC 1071] , R.N. Nanjundappa [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409] and B.N. Nagarajan [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the

¹⁴(2008) 5 SCC 241

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 [Ed.: Emphasis in original.] 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 supplied)

...

19. *On the other hand, in some of the cases, the said paragraph, for example, in the decision of this Court in Municipal Corpn., Jabalpur v. Om Prakash Dubey [(2007) 1 SCC 373 : (2007) 1 SCC (L&S) 256] had been applied to the following effect: (SCC p. 381, para 11)*

“11. The question which, thus, arises for consideration, would be: Is there any distinction between ‘irregular appointment’ and ‘illegal appointment’? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the

employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to.”

24. The resolution of the Gram Panchayat though Block Level Selection Committee duly existed where the Block Development Officer was the appointing authority of a Gram Panchayat Karmee but no such procedure was followed. At the time of the petitioner's appointment, Shri Sudhir Rana father of the petitioner of this instant writ petition was still in service, rendering the position not vacant. Furthermore, the Gram Panchayat's records reveal that Shri Sudhir Rana's appointment was neither intimated to the Government nor approved prior to his assumption of duties.
25. After going through the report filed by the Respondent No.6 before the Hon'ble Court it was crystal clear that appointment of the petitioner was purely granted by the capacity of the Panchayat Pradhan.
26. In Paragraph 2 of the report submitted by the Respondent No. 6 clearly states *“that the appointment of petitioner as a casual worker was not made under any Government schemes or to fulfil any vacant place but the work has been allotted by the Pradhan to the petitioner to fulfil the scarcity of worker for the panchayat work as the panchayat does towards our society for the social and economic development as described under Section 19 of West Bengal Panchayat Act, 1973 where it was clearly stated ‘A Gram Panchayat shall function as a unit of self-government for achieving the goal of human*

development including social and economic development and securing social justice for all, and shall, subject to such conditions as may be prescribed or such directions as may be given by the state government'. So the appointment which was made for the Gadadhar Rana to manage the scarcity of workers for panchayat work in the personal capacity of the Pradhan as the work which the panchayat can do for social development and it is not appointment followed by Procedure of Government Schemes. From this paragraph of the report it becomes evident that the appointment of the petitioner is purely done personal capacity of the Pradhan for social development and it is not appointment followed by Procedure of Government Schemes."

27. The Pradhan may appoint workers only for *bona fide* social service under Article 20 of the said Act and not for filling sanctioned posts. Thus, the petitioner's engagement was a personal decision of the Pradhan which could not be equated to an appointment under Government scheme or Government procedure barring the petitioner to claim regularization in accordance to notification dated 16.09.2011 particularly when he did not apply under such a scheme. Moreover, the respondents relied on FMA 722/2011 (Absorption of casual workers Vs. Unknown) to contend that the Courts cannot direct regularization of illegal or irregular appointments in breach of recruitment rules.

28. The record revealed the petitioner had rendered more than two decades of continuous unblemished service under Mahata Gram Panchayat; however, such long engagement was not preceded by any sanctioned post, formal selection procedure, advertisement, prior approval of the State Government

as mandated under the West Bengal Panchayat Act, 1973, the Panchayat Administrative Rules the petitioner having originated solely upon the discretion of the Pradhan without legal approval from the State Government or under any Government scheme or statutory framework suffered from primary infirmity and, therefore, illegal in the eye of law.

29. While prolonged service may give rise to equitable considerations, settled jurisprudence of the Hon'ble Supreme Court as aforesaid distinguish between irregular appointments against sanctioned posts and illegal appointments granted *de hors* the recruitment rules. The former may be considered for one time regularization upon the fulfillment of stringent conditions, the latter however cannot be validated by mere efflux of time.
30. As the petitioner's engagement was not against any sanctioned vacancy nor in accordance with statutory recruitment norms apart from the discretion enacted by the Pradhan without the validation and approval of the State Government, the same cannot be compelled to regularize the petitioner's service. The plea of legitimate expectation cannot override statutory mandates nor can equity be invoked to perpetuate an illegality. Consequently, the petitioner's claim for regularization cannot be sustained in law.
31. An appointment is irregular and not illegal in the opinion of this Court when
 - (a) a sanctioned post exists, (b) the engagement is not tainted by fraud, corruption or manipulation, (c) the employee possesses requisite qualifications and only procedural lapses such as absence of a full selection

committee, partial non-compliance with recruitment rules or defects in advertisements, etc. occur.

32. In such circumstances if the employee has served continuously for 10 years or more without protection of any Court order, a one-time window for regularization can be offered since the subsistence of the appointment is lawful even if the form is flawed. Equity and fairness supplement constitutional guarantees under Articles 14 and 16 of the Constitution of India.
33. Had the petitioner's case fallen within this category – continuous service against a sanctioned post with merely procedural defects – his two decades of uninterrupted work would have indubitably justified regularization under the said principle.
34. In the opinion of this Court, an appointment is illegal when (a) there is no sanctioned post, (b) no recruitment rules were followed at the inception, (c) Government approval was not obtained despite statutory mandate. The appointing authority had no jurisdiction to create or fill the post and the engagement was *de hors* statutory requirements obligating the same to be void *ab initio*.
35. The distinction between an irregular appointment and an illegal one in the understanding of this Court is not a matter of cosmetic semantics but goes to the root whether the engagement can survive judicial scrutiny. An irregular employment is one where the authority has the power to appoint and the post exists, but certain bureaucratic steps have not meticulously been followed. In such cases, long years of service may justify indulgence, for

the wrong is curable and the State cannot profit from its own procedural negligence.

36. However, where the appointment is illegal, as in the present case, granted de hors the statutory framework, without sanctioned post, without authority, without approval, and without any semblance of a selection process, the entire edifice collapses. No length of service can breathe legality into what was void from inception.
37. Courts cannot reward an appointment made through personal discretion in disregard of the law for that would only embolden illegality and prejudice, the rights of the countless eligible candidates or aspirants who never had the opportunity to compete.
38. In such cases, length of service would not cure the illegality. Equity could not override explicit prohibitions in statute, no regularization can be ordered as the same would objectify illegality and infringe the rights of eligible aspirants. The petitioner's case demonstrated unerringly the Pradhan's objectionable authority being denied of the same under the statute to appoint any person against any post without prior approval from the State Government. The petitioner's appointment by the Pradhan in his individual authoritative capacity not cast on him by the statute, was not against a sanctioned vacancy. No selection procedure, advertisements or District Level Selection Committee was convened and the engagement emanated from personal discretion and not in compliance of Government scheme or procedure. Therefore, the petitioner's appointment fell within the category of

illegal engagements where regularization was impermissible under constitutional discipline.

39. Thus, while irregular appointments may fructify into eligibility for regularization through long years of service and fulfillment of statutory conditions, illegal appointments cannot, for the Constitutional Courts, sanctify what the statutory prohibits. The petitioner's appointment being illegal at the inception cannot cure by passage of time and the relief of regularization cannot be cured since his illegal appointment was void *ab initio*. It was not merely defective but also fundamentally unauthorized. The Pradhan acted outside the statute and the rules and the appointment cannot, by any judicial stretch, be regularized. Compassion cannot trump the Constitution and sentiment cannot substitute for statutory compliance. Courts cannot rehabilitate what the statute does not recognize. The remedy of regularization is, therefore, untenable.

40. In view of the above discussions, the instant writ petition being WPA 19114 of 2019 stands dismissed.

41. There is no order as to costs.

42. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)