

Form No. J.(2)
Item Nos. 1-2
Court No. 1
PG

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

HEARD ON: 18.12.2025

DELIVERED ON: 22.12.2025

CORAM:

**THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND**

THE HON'BLE JUSTICE PARTHA SARATHI SEN

WP.CT. 160 of 2017

With

I.A. No. CAN 1 of 2024

The Union of India & Ors.

Versus

Pannalal Thakur

With

WP.CT. 161 of 2017

With

I.A. No. CAN 1 of 2024

The Union of India & Ors.

Versus

Sanjoy Lal Maitra

Appearance:-

Mr. Indrajit Dasgupta

Mr. Arijit Majumder

.....For the Petitioners

Mr. Soumya Majumder, Sr. Adv.

Mr. Victor Chatterjee

Mr. Pramitava Nath

Ms. Sreya Bhattacharya

.....For the Respondents

JUDGEMENT (ORAL):

SUJOY PAUL, ACJ:-

1. These two petitions under Article 226/227 of the Constitution assails the order of Central Administrative Tribunal (Tribunal) dated 18.11.2016 passed in O.A. No.817 of 2015 and O.A. No.818 of 2015 thereby allowing the applications of respondents/applicants.

FACTUAL BACKGROUND

2. The facts are taken from WP. CT 160 of 2017. The respondent/applicant, Pannalal Thakur was initially engaged as Casual Labour in 1987 and continued till 1994. Pannalal Thakur alongwith other co-employee filed O.A. No.1153 of 1994 for seeking a direction for regularization. The Tribunal by order dated 15.03.1996 disposed of the said O.A. and directed the Department to consider the case of applicants therein against Group – D posts. The Department offered temporary appointment on contractual basis to the applicants therein for the post of Peon (Planned Scheme). One such appointment order dated 20.03.1997 is filed as Annexure – A2. Consequent thereupon, the employee joined as Peon (Planed Post). Shri Pannalal Thakur was transferred on 09.06.1999 to Data Processing Division. Another applicant, Shri Sanjoy Lal Maitra was appointed on contractual basis as Data Entry Operator, Grade – III. He continued up to 12.08.1999. He joined S.D.R.D. upon his transfer by order dated 27.07.2005. Learned counsel for Department projected that pursuant to the recommendations of the 6th Pay Commission, the Group – D posts were converted as Multi-Tasking Staff (M.T.S.). The original applicants preferred an application/representation on 13.04.2007 for their regularization. Since Department did not consider the said representation, O.A. 390 of 2007 was filed, which was disposed of on 21.08.2007 by directing the respondents to consider the representation dated 13.04.2007 and pass a reasoned order within four weeks. Consequently, by order dated 08.01.2008, the representation was not entertained. However, an observation was made

that Ministry will continue to explore the possibility of absorbing them in non-planned vacancy in the Division.

3. Contention of learned counsel for petitioners is that this order dated 08.01.2008, in absence to any challenge to it, attained finality. A similarly placed contractual employee approached the Kolkata Bench of Tribunal for consideration for regularization. The O.A. was disposed of on 18.12.2013. Other similarly situated employees preferred O.A. No.339 of 2011 and connected matters before Bangalore Bench of Tribunal, which were disposed of by directing the respondents to continue and regularize them in service.
4. The Department on 15.05.2015 passed an O.M. stating that the Posts are created temporarily for a planned scheme and these Posts cannot be converted from planned to non-planned. The regular appointment as temporary Government Employees would be made against Temporary Planned Post but similarly situated persons cannot be given similar benefits because they were not party to the cases pursuant to which the O.M. dated 15.05.2015 was issued.
5. The original applicants herein were terminated by order dated 21.05.2015. Assailing the said termination and seeking regularization, they filed O.A. No.817 and 818 of 2015 before the learned Tribunal. The Tribunal on 26.05.2015 passed the interim order directing their continuance. By impugned order dated 18.11.2016, both the O.As were allowed, which became subject-matter of challenge in the present petitions.

CONTENTION OF DEPARTMENT

6. Sri Dasgupta, learned counsel for Department by placing reliance on the Constitution Bench judgment in the case of ***Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors. (2006) 4 SCC 1*** submits that this judgment needs to be read in its entirety and paragraph 53 of the judgment cannot be read in isolation. The Apex Court made it clear that the appointment made *de hors* the rules, without sanctioned posts cannot be regularized. In the instant case, the appointment of applicants were 'irregular' and not 'illegal'. However, their appointments were made without following any rule/regulation. Their names were called from employment exchange by the Department and they were subjected to a selection by a selection committee constituted by the Department. However, their appointment order dated 20.03.1997 makes it clear that appointment was against a planned scheme and was in temporary capacity for a limited period. Thus, this appointment order nowhere shows that they were appointed against a regular/vacant post. No right of regularization accrues from order dated 20.03.1997. Earlier, when their prayers for regularization were not acceded to by passing order dated 08.01.2008, they did not challenge the said order.
7. The bone of contention of Sri Dasgupta, learned counsel for Department is based on a three-Judge Bench judgment of Supreme Court reported in ***(2008) 10 SCC 1 (Official Liquidator Vs. Dayanand & Ors.)***. By placing heavy reliance on paragraphs 75 to 78 of this judgment, learned counsel for the Department submits that the judgment of the Constitution Bench of Supreme Court in ***Umadevi (supra)*** became law of the land under Article

141 of the Constitution. This judgment is binding on all Courts and authorities. This judgment of Five Judges Bench cannot be diluted by Benches of same or lesser strength. The Apex Court deprecated the Courts all over the Country in taking a different view than the view taken by the Constitution Bench in the case of ***Uma Devi (supra)***. Furthermore, Sri Dasgupta has taken pains to submit that a careful reading of *ratio decidendi* of this judgment in ***Official Liquidator (supra)*** makes it clear that one cannot claim the benefit of regularization on the touchstone of parity or Article 14 of the Constitution. In other words, discrimination also cannot be a ground for obtaining a positive direction for consideration for regularization.

8. By taking this Court to the impugned order the learned Tribunal, learned counsel for Department submits that very foundation of the impugned order is based on two judgments passed by Karnataka High Court in WP(C) No.17545 of 2012 and WP 57381 of 2013. A conjoint reading of these judgments and the impugned order of Tribunal shows that in none of these, the basic parameters were considered. The availability of sanctioned post, observance of recruitment process as per rules/regulations were not considered and regularization were directed on mere asking. The said decisions and parity arising thereto cannot be a reason for passing the impugned order in view of the test laid down by Supreme Court in ***Official Liquidator (supra)***.
9. The next limb of argument is also based on the judgment of the Supreme Court in ***Umadevi (supra)***. It is submitted that as per this judgment, the exercise of consideration for regularization after completion of 10 years of

service was a one-time exercise to be completed within 6 months. It was not an exercise to be undertaken periodically. Thus, for this reason also, the Tribunal erred in issuing direction for consideration for regularization.

10. At the end, Sri Dasgupta placed reliance on the judgment of Supreme Court reported in **(2021) 13 SCC 225 (Chairman/Managing Director, Uttar Pradesh Power Corporation Limited & Ors. vs. Ram Gopal)** to contend that the present respondents are in fact, 'fence sitters'. They did not approach the Tribunal for their regularisation immediately after completion of 10 years of service. They did not even challenge the order dated 08.01.2008 and approached the Tribunal only when similarly placed employees got the benefit of regularisation by approaching the Calcutta and Bangalore Bench of the Tribunal. Thus, they are 'fence sitters'/sleeping litigants and are not entitled for any benefit.

CONTENTION OF THE RESPONDENTS/ORIGINAL APPLICANTS

11. Sri Soumya Majumder, learned senior counsel for the respondents supported the impugned order of the Tribunal. It is submitted that the question of considering the relevant ingredients, namely availability of posts, observance of selection procedure etc. was immaterial because the Tribunal gave a specific finding that the aforesaid judgments passed by Karnataka High Court are squarely applicable. More so, when Department in its own pleadings in page 9(i) categorically pleaded that the similarly placed contractual employees approached Calcutta Bench, Bangalore Bench and these Benches passed the order in their favour.
12. Once the factum of similarity is established beyond any cavil of doubt, there was no reason for the Tribunal to examine the factual matrix of the

case and it can be presumed that similarity means similarity on all relevant aspects with the applicants before the Calcutta Bench and Bangalore Bench.

13. Indisputably, the judgment delivered by Bangalore Bench in similar matter got a stamp of approval from the Karnataka High Court and SLP filed by Department against this order was dismissed. Thus, the Tribunal has not committed any error in extending the benefit of a judgment passed in cases of similarly situated employees. In fact, the Department itself should have extended the benefit of consideration for regularisation to similarly situated employees and could not have restricted it to the litigants, who became subject matter of consideration of OM dated 5.01.2015 (Annexure-A14).
14. Learned senior counsel criticised the order dated 5.01.2015 by contending that a model employer/State cannot say that similarly situated persons will not be given similar benefits. This kind of approach paves way of exploitation. In the result, the respondents, who worked for decades could not get the benefit of regularisation. During pendency of these petitions, one such applicant Mr. Pannalal Thakur retired on attaining the age of superannuation.
15. The stand of the respondents is that it was accepted by Constitution Bench in ***Umadevi (supra)*** that the exercise of consideration for regularisation upon completion of 10 years service as a cut-off date will be undertaken by the Department. However, if Department either does not undertake that exercise or deprives an eligible employee from consideration, the said action cannot be countenanced.

16. By placing reliance on the judgment of Supreme Court in the case of ***Dharam Singh & Ors. vs. State of U.P. & Anr., 2025 SCC OnLine SC 1735*** it is submitted that Apex Court considered the judgment of *Uma Devi* again and came to hold that such exploitation runs contrary to the Constitutional scheme and therefore, the right of consideration for regularisation cannot be taken away.
17. The judgment of Supreme Court in the case of ***Narendra Kumar Tiwari & Ors. vs. State of Jharkhand & Ors. (2018) 8 SCC 238*** was relied upon to contend that the exercise of regularisation is not a one-time exercise and it needs to be undertaken for those, who had completed 10 years of service but were not considered within the time limit of six months prescribed in the case of ***Umadevi (supra)***.
18. Furthermore, Sri Majumder, learned senior counsel placed reliance of the case of ***Official Liquidator (supra)*** to distinguish the same. It is submitted that in the peculiar factual backdrop of said case, certain observations were made by Supreme Court, which are not binding and cannot be treated to be *ratio decidendi* of the said case.
19. Lastly, Sri Majumder pointed out that there was a cleavage of opinion between members of a Division Bench of this High Court. The matter travelled to the 3rd Judge, who gave an opinion after considering the judgment of Supreme Court in *Official Liquidator (supra)* in the case of ***Indian Council of Agricultural Research & Ors. vs. Taramoni-II & Ors. 2008 SCC OnLine Cal. 302***. On the strength of the observation of the learned 3rd Judge, it is argued that what is material is the length of service rendered as casual/temporary employee. The length of service of 10 years

is the main consideration for delivering the judgment in **Umadevi (supra)**.

If such length is applicable to the instant case and consideration was denied on impermissible reasons, no fault can be found in the order of the Tribunal.

20. The parties confined their arguments to the extent indicated above.

21. We have heard the parties at length and perused the record.

Analysis:-

22. The admitted facts between the parties make it clear that both the original applicants before approaching the tribunal in the instant matter completed more than 10 years of continuous service with the department. In other words, such service of more than one decade was without their being any interim direction/protection by the Court. The constitution bench in the case of **Umadevi (supra)** held that cases of irregular appointments can be considered for regularisation as a 'one-time measure' provided the services rendered for more than 10 years were against sanctioned posts and not under the cover of interim orders of the Court's/Tribunal. In these cases, the department could not point out any statutory rule/regulation which prescribes a methodology which needs to be followed. In absence thereof, the selection must be in consonance with principles of fairness flowing from Article 14 of the Constitution. Admittedly, the department in order to fill up the posts which were occupied by present respondents, got the names of applicants & others from employment exchange. The respondents names were forwarded by employment exchange and they along with other eligible candidates were subjected to interview by a board/committee constituted by the department. Thus, it cannot be said that present respondents are

‘back door’ entrants. We are also unable to hold that their appointment was ‘illegal’ in nature. Permanently, the learned Counsel for the department during the course of hearing fairly admitted that the appointment of present respondent was at best ‘irregular’ and not ‘illegal’. Hence, present respondents satisfied the requirement of continuous service of more than 10 years, their selection was pursuant to a fair procedure adopted by department itself and to this extent there was no hurdle for them for getting considered.

23. Interestingly, the department before the tribunal and in the present writ petition in Page 9 Paragraph (i) pleaded as under:

“(i) In the meantime, a similarly placed contractual employee approached the Learned Tribunal, Kolkata Bench and the same was disposed of by the order 18.02.2013 by directing regularisation and similarly placed employees also approached before the Learned Bangalore Bench and the Learned Bangalore Bench was pleased to dispose of the original application being O.A. No.339 of 2011 in favour of applicants therein by order dated 01.04.2013 by directing the applicants to be continued in service.”

(Emphasis Supplied)

24. In view of these pleadings, the factum of similarity between present respondents and the persons who succeeded before Bangalore Bench of Tribunal cannot be doubted. Indisputedly, the said order of Bangalore Bench was upheld by the Karnataka High Court and SLP filed by the department against Tribunal and High Court’s order was dismissed.
25. The ancillary question is when similarity is established, whether tribunal could have dealt with the matter by applying any other different parameter. In our opinion, the similarly situated employees must be dealt with by

similar parameters for the purpose of regularisation. One huddle in this regard was sought to be projected by department by contending that present respondents are “fence sitters”. We do not see much merit in this contention for the simple reason that in the initial rejection order dated 8th January, 2008, the prayer for absorption/regularisation which was not rejected in toto. Instead, the respondents were given to understand that ministry will continue to explore the possibility of absorbing them in the department. Thus, if respondent have not challenged this order, it will not cause any dent on their prospects. The respondents herein after termination filed the instant OS with quite promptitude and there was no delay in filing the OA assailing the termination order. In addition, they prayed for regularisation as well. In our Judgment, if employee works continuously for more years than another employee who rendered lesser years of service and claims regularisation, the employee who has rendered service of more number of years is on a higher footing. Putting it differently, longer service with the department makes his case stronger and not weaker. Thus, the judgment of **Ram Gopal** (*supra*) cannot be pressed into service. The said case was not relating to regularisation of service and hence cannot be pressed into service.

26. The learned Counsel for the department placed heavy reliance on the judgment of Supreme Court in **official liquidator** (*supra*) to urge that the claim based on parity or Article 14 of Constitution cannot be entertained. Thus, similarity of the view taken in similar matters by Bangalore Bench of Tribunal and Karnataka High Court cannot be a ground to sustain the impugned orders. The said judgment, in our opinion in the facts and

circumstances of this case cannot improve the case of the department. We say so because the constitution bench of Supreme Court in **Umadevi** (*supra*) considered the length of service as one of the fundamental parameter for consideration for regularisation. The respondent herein satisfied the requirement of said parameter. As noticed above, their selection was also not a 'back door' entry. Thus, merely because the tribunal had taken the view based on similar cases, fact remains that the similar cases were of employees who succeeded in the matter of their regularisation based on their length of service. Thus, a holistic view needs to be taken and such views shows that the similarly situated employees got benefit of regularisation from Bangalore Bench of Tribunal which order was affirmed by Karnataka High Court and SLP of the department was dismissed. The department in compliance of Bangalore Bench Order in OA 339 of 2011 and other similar matters issued OM dated 5th January, 2015 Annexure-A14 and opined that similarly situated persons will not be given any benefit. A conjoint reading of pleading of writ petition reproduced hereinabove and OM dated 5th January, 2015 shows that factum of similarity between present respondents and applicants before Bangalore Bench is not in dispute. Whether these respondents can be given a step-motherly treatment on the touchstone of the judgment of **official liquidator** (*supra*) is the basic question raised by the department. In our considered judgment, the holistic view of the matter leads us to the only conclusion that the ultimate reason for success of the similarly situated persons from Bangalore Bench was their length of service which is the paramount parameter laid down in the case of **Umadevi** (*supra*). After

having satisfied the necessary parameters, merely because the applicants of Bangalore Bench were similar to the present respondents, present respondents cannot be given a dissimilar treatment.

27. The Apex Court in **Narendra Kumar Tiwari** (*supra*) considered its previous judgment in **State of Karnataka vs. M.L. Kesari** reported in (2010) 9 SCC 247 and dealt with the term 'one time measure' mentioned in the judgment of **Umadevi** (*supra*). The Court made it clear that if employee had rendered requisite number of years of service and otherwise eligible, he cannot be deprived from consideration for regularisation merely because department had not undertaken the exercise of screening him for regularisation. Since present respondents had rendered more than 10 years of service before the cut off date in (10th April, 2006) without any interim order, they cannot be put to a comparative disadvantageous position for the inaction of the department in considering them for regularisation. Thus, meaning of 'one time exercise' cannot be restricted to a consideration within the period stipulated in the judgment of **Umadevi** (*supra*). In **Inder Pal Yadav & Ors. vs. Union of India & Ors.** reported in (1985) 2 SCC 648 the Apex Court opined:

*"There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. **Therefore, those who could not come to the court need***

not be at a comparative disadvantage to those who rushed in hare. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.”

(Emphasis Supplied)

28. The Apex Court considered the judgment of **Umadevi** in its recent judgment in **Dharam Singh** (*supra*). The Apex Court held as under:

*“11. Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non-suit the appellants is misplaced. Unlike Umadevi (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in *Jaggo v. Union of India* and in *Shripal v. Nagar Nigam, Ghaziabad* have emphatically cautioned that Umadevi (Supra) cannot be deployed as a shield to justify exploitation through long-term “ad hocism”, the use of outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from *Shripal* (*supra*) have been reproduced hereunder:*

*“14. The Respondent Employer places reliance on Umadevi (*supra*) to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a*

shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records-despite directions to do so-allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgment of this court in *Jaggo v. Union of India* in the following paragraphs:

"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.

.....

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- Misuse of “Temporary” Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled 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.”

18. *Moreover, it must necessarily be noted that “ad-hocism” thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. **If “constraint” is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.***

(Emphasis Supplied)

29. It is noteworthy that department had already regularised the similarly situated persons by OM dated 5th January, 2015 Annexure-A14. The Supreme Court in **Nihal Singh vs. State of Punjab** reported in **(2013) 14 SCC 65** opined that the State cannot be heard to say that the employees are not entitled to be absorbed into the service of the State as their appointments were purely temporary and not against any sanctioned post created by the department. The Court opined that the department cannot enjoy the supply of cheap labour over a period of decades. Such practice to continue employees like this is not inconsistency with the constitution. It was candidly held that judgment of Supreme Court in **Umadevi** (*supra*)

cannot become a licence for exploitation by the State and its instrumentality.

30. What should be consciously eschewed by the courts is to extend the benefit of negative equality. The benefit of regularization received by similarly placed employees pursuant to court orders by no stretch of imagination can be said to be an illegal benefit. Hence tribunal has not committed any error of fact or law which warrants interference by this Court.
31. In view of foregoing analysis, in our opinion the holistic view of the matter shows that the tribunal had taken a plausible view which does not warrant any interference by this Court.
32. Resultantly, interference is declined and both the writ petitions are **dismissed**.

(Sujoy Paul, A.C.J.)

I agree.

(Partha Sarathi Sen, J.)