

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

WPA 298 of 2024

Gobinda Chandra Roy & Ors.

Vs.

The State of West Bengal & Ors.

For the petitioners : Mr. Ekramul Bari, Sr. Adv.
Mr. Intiaj Uddin, Adv.
Ms. Rinka Chakraborty, Adv.

For the State respondent : Mr. Momenur Rahaman, Adv.
Ms. Rima Sarkar, Adv.

Heard On : 10.07.2025

Order On : 10.07.2025

Om Narayan Rai, J.

1. The case run in the writ petition is that petitioners are drivers who had been engaged in terms of the Rashtriya Sama Vikash Yojana (RSVY) scheme as contractual employees. While the petitioner nos.1, 6, 7 and 8 had been engaged with effect from December 1, 2004, the petitioner nos. 2, 3, 4 and 5 had been engaged with effect from January 25, 2005.

2. Although the petitioners were engaged as drivers under the District Welfare Health and Family Welfare Samity, Jalpaiguri in terms of the said RSVY scheme for three years, on contract basis, in terms of the order issued by the Chief Medical Officer of Health, Jalpaiguri, yet since the RSVY scheme got terminated on March 31, 2007 i.e. before completion of three years, the petitioners were placed under the Motor Mechanical Unit under the Chief Medical Officer of Health, Jalpaiguri for a period of three years beginning April 1, 2007. It is the petitioners' case that since April 2007 the petitioners have been rendering continuous service.

3. Under the RSVY scheme, the petitioners were paid only Rs.3000/- per month but subsequently, as per the resolution adopted in the 11th Governing Body Meeting of the District Health and Family Welfare Samity (DH and FW Samity), Jalpaiguri the petitioners' remuneration was enhanced to Rs.8000/- per month with effect from May 1, 2010 as would be evident from the letter dated April 30, 2010 issued by the Chief Medical Officer of Health, Jalpaiguri and Secretary, District Welfare Health and Family Welfare Samity, Jalpaiguri, to the District Magistrate, Jalpaiguri..

4. Subsequently, upon receipt of a suggestion from the District Magistrate, Jalpaiguri for enhancement of the remuneration of the drivers (including the petitioners), the Chief Medical Officer of Health, Jalpaiguri on January 14, 2011 wrote to the Mission Director (NRHM) & Commissioner (FW) informing the Mission Director that the petitioners along with other drivers were being paid from of the corpus fund of the District Welfare Health and the District Welfare Health and Family Welfare Samity, Jalpaiguri and the said Samity did not have sufficient funds to support such enhancement. Request was made for the District Magistrate, Jalpaiguri to take appropriate steps to "solve the problem".

5. This was followed by another communication dated September 6, 2012 issued by the Chief Medical Officer of Health and Secretary, DH & FW Samity, Jalpaiguri which, inter alia, indicated that out of 53 sanctioned posts for drivers, 29 were lying vacant in the District of Jalpaiguri as on that date. The said letter mentioned the details of 14 contractually engaged RSVY drivers which included the names of the petitioners and recommended for early action in view of the fact that the said drivers demanded enhancement of remuneration and absorption in the department as permanent drivers (Annexure- P4 at page 30 of the writ petition). Copy of the said communication was also marked to the Director of Health Services, West Bengal.

6. Thereafter on April 24, 2017, the Chief Medical Officer of Health, Jalpaiguri followed the matter up with the Director of Health Services, West Bengal referring to an earlier letter dated April 21, 2017 written to the same addressee and requested him to consider the issues of according permanent status of service and enhancement of remuneration (in terms of the Finance Department (Audit Branch) Memo dated February 25, 2016) of the 14 drivers whose names had been mentioned in the earlier communication be. A similar recommendation was also made by the said Chief Medical Officer of health to the Special Secretary, T.D.E Branch by a letter dated April 25, 2017.

7. Subsequently, on September 18, 2019, the Executive Director, WBSH & FW Samity issued an order thereby directing to bring parity of remuneration of all contractual drivers under the West Bengal State Health and Family as well as the District Health and Family Welfare Samity. By the said order it was directed that contractual remuneration in respect of 14 RSVY drivers of whom 8 had been posted in district of Jalpaiguri and 6 in the Alipurduar district would get enhanced from

Rs.8500/- per month to Rs.13,560/- per month with effect from the date of issuance of the said order.

8. The petitioners however have approached this Court contending that such enhancement is not in terms of the memorandum dated February 25, 2016 issued by the Principal Secretary to the Government of West Bengal whereby the payments/monthly remuneration of contractual or daily rated workers were revised and contractual employees who have remained engaged for more than fifteen years are entitled to much more than the enhanced sum were granted in terms of the said order dated September 18, 2019.

9. It may be mentioned that the petitioners had earlier approached the West Bengal State Administrative Tribunal by filing an Original Application but such application was not entertained on the ground of lack of jurisdiction and hence the present writ petition.

10. Mr. Bari, learned Advocate appearing for the writ petitioners submits that not only was the enhancement not granted to the petitioners in terms of the memorandum dated February 25, 2016, but also during the pendency of the writ petition there has been a further enhancement in terms of a memorandum issued by the Additional Chief Secretary to the Government of West Bengal on March 1, 2024 and the petitioners are deprived of even that. A copy of the said memorandum has been handed up to Court. The same is taken on record.

11. He further invites the attention of this Court to the report in the form of affidavit filed on behalf of the respondents and submits that the only ground cited by the respondents to annul the petitioners' request for absorption is the judgment of

the Hon'ble Supreme Court in the case *Uma Devi Vs. State of Karnataka* reported at 2006 Volume 5 SCC page 1.

12. Mr. Bari submits that the pronouncement of the Hon'ble Supreme Court in the aforesaid case has been read by the respondents in a manner detrimental to the petitioners. It is submitted that the Hon'ble Supreme Court has, in the subsequent judgments, explained that the judgment of the Hon'ble Supreme Court in the case of *Uma Devi (supra)* should not be used to prevent regularization or absorption of persons who had been engaged on contractual basis despite there being sufficient workload throughout the year; despite the job being perennial in nature and despite there being regularity of service and the nature of duties discharged by the concerned employees for years together. In support of his such contention, he seeks to rely on the judgment of the Hon'ble Supreme Court in the case of *Jaggo Vs. the Union of India & Ors.* paragraphs 25 and 26 reported at 2024 SCC Online SC 3826.

13. He has also placed reliance on an unreported judgment of a Co-ordinate Bench of this Court in the case of *Sandip Mondal Vs. the State of West Bengal* in WPA No. 12347 of 2018 dated June 25, 2025.

14. Learned Advocate appearing for the State respondent submits that the petitioners' remuneration has been duly enhanced in terms of the order dated September 18, 2019. It is further submitted that the memorandum dated March 1, 2024 would not be applicable to the petitioners and as such, the petitioners' claim for enhancement in terms of the said memorandum should not be countenanced. It is further submitted on behalf of the State respondent that the petitioners took the job and got engaged on contractual basis with open eyes and as such they cannot turn around and suddenly claim regularization of their service.

15. He placed reliance on the judgment of the Hon'ble Supreme Court in the case Uma Devi (supra) to buttress such contention. It is further submitted on behalf of the State respondent that there was indeed a break in service of the petitioners. The petitioners' services were discontinued with effect from July 31, 2007 and the petitioners were reengaged only on March 29, 2012 and therefore, it cannot be said that the petitioners have been in regular service from 2017 till date without any break.

16. Mr. Bari refutes such submission made on behalf of the State respondent. He invites the attention of this Court to the Memo dated September 6, 2012 issued by the Chief Medical Officer of Health and Secretary, DH & FW Samity, Jalpaiguri to demonstrate that the petitioners in fact had been in service even after termination of the RSVY project with effect from July 31, 2007. He invites the attention of the Court to the following observations (Annexure- P4 page 30):-

- *“Those 6 drivers under CMOH & Secretary, Jalpaiguri were provided monthly remuneration at the same rate out of the interest fund of the DH & FW Samiti, Jalpaiguri since 1st April 2007 as resolved in the Executive Committee meeting of DH & FWS, Jalpaiguri.*
- *As per decision taken in the DH & FW Samiti, Jalpaiguri meeting the demand of those 6 drivers for enhancement of honorarium was considered and was increased to @Rs.8000/- per month w.e.f. May 2010.*
- *The D.M., Jalpaiguri vide her memo no. 992 (7) Dev/RSVY/2010-11 dated: 30.11.2010 issued a letter for placement of rest 13 RSVY drivers of MMU to the concerned Samities and also for fixing monthly remuneration @Rs.8000/- per month.*
- *Proposal for absorption as regular driver in respect of the 6 RSVY drivers under CMOH, Jalpaiguri on contractual basis was sent to The Jt. DHS (Transport) GoWB, vide this office memo no. 1940/Estt./Dev dated: 12.06.2009 as it was asked via no.*

SHTO/IE-4-33/643 dated: 20.05.2009 of the Jt. DHS (Transport), WB.”

17. Heard the learned Advocates appearing for the respective parties and considered the material on record.

18. It appears that from the case narrated hereinabove and the documents on record that the petitioners have been discharging their duties as drivers, though on contractual basis but regularly without break since July 31, 2007 despite discontinuation of the RSVY scheme. The petitioners were indeed not working under the said scheme but that they were working and rendering services as drivers even after termination of the said RSVY scheme cannot be doubted in view of the observations made by the Chief Medical Officer of Health, Jalpaiguri in the memo dated September 06, 2012.

19. Since the petitioners are contractual workers engaged by the State Respondents they are similarly circumstanced as the other contractual or daily rated workers engaged by the state agencies and therefore there is no reason why the benefits that have been extended to other contractual workers engaged by the State authorities in terms of the memorandum dated February 25, 2016 issued by the Principal Secretary to the Government of West Bengal and the subsequent memorandum dated March 1, 2024 issued by the Additional Chief Secretary to the Government of West Bengal (copy whereof has been handed up to Court today by Mr. Bari) whereby consolidated monthly remuneration of contractual/casual/daily rated workers have been revised, would not be applicable to the petitioners.

20. This Court has noticed the judgment of the Hon'ble Supreme Court in the case of Jaggo (supra). The observations of the Hon'ble Supreme Court in paragraphs 25, 26 & 27 are edifying. The same are extracted hereinbelow:

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

Misuse of “Temporary” Labels: *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as “temporary” or “contractual,” even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

Arbitrary Termination: *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

Lack of Career Progression: *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systematic disparity between them and their regular counterpartes, 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 benfits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families*

to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in *Uma Devi (supra)* sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi (supra)* to argue that no vested right to regularization exists for temporary employees, overlooking the judgment’s explicit acknowledgement of cases where regularization is appropriate. The selective application distorts the judgment’s spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In the light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization’s functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

21. The instant case appears to be a fit case for application of the ratio of the aforesaid judgment of *Jaggo (supra)*. Indeed the nature of the job undertaken by the petitioners and the duties discharged by them are such that neither importance

thereof can be undermined nor the workload can be said to be intermittent or nonexistent.

22. In such view of the matter, this writ petition is disposed of by directing the respondent nos. 3 and 4 to enhance the remuneration payable to the petitioners in terms of the latest memorandum pertaining to enhancement/revision of remuneration payable to contractual/daily rated employees. Mr. Bari has handed up to Court a memorandum dated March 1, 2024 as aforesaid. The respondents shall have due regard to such memorandum and shall extend the benefit of such memorandum to the petitioners as well.

23. As regards the issue of absorption of the petitioners and regularization of their services, the respondent nos. 3 and 4 shall take a decision as regards the same in the light of the judgment of the Hon'ble Supreme Court in the case of Jaggo (supra) within a period of four weeks from the date of communication of this order. The petitioners shall be given a hearing before taking such decision and a reasoned order shall be passed which shall be communicated to the petitioners within a week from passing thereof.

24. WPO No. 298 of 2024 is disposed of accordingly with the above observations.

25. Urgent certified photo copy of this order, if applied for, be supplied as expeditiously as possible.

[Om Narayan Rai, J.]