**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WP(C) No.7661 of 2020,**
**W.P.(C) No. 6682 of 2020,**
**W.P.(C) No. 9555 of 2020,**
**W.P.(C) No.12165 of 2020 &**
**W.P.(C) No.15485 of 2020**

Applications under Articles 226 & 227 of Constitution of India.

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***AFR***

**W.P.(C) No.7661 of 2020**

Manas Ranjan Samal (since dead)
through his LRs and Others .... Petitioners

-versus-

State of Odisha and others .... Opposite Parties

**W.P.(C) No.6682 of 2020**

Natabar Panda and Others .... Petitioners

-versus-

State of Odisha and others .... Opposite Parties

**W.P.(C) No.9555 of 2020**

Santosh Kumar Panigrahy .... Petitioner

-versus-

State of Odisha and others .... Opposite Parties

**W.P.(C) No.12165 of 2020**

Sakti Prasad Mohanty and Others .... Petitioners

-versus-

State of Odisha and others .... Opposite Parties

**W.P.(C) No.15485 of 2020**

Sadananda Mohanta .... Petitioner

-versus-

State of Odisha and others .... Opposite Parties

**Advocate(s) appeared in these cases:-**

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**For Petitioner(s)** : M/s. Budhadev Routray, Sr. Advocate with M/s. K. Mohanty, S.K. Samal, S.P. Nath, S.D. Routray, B.P. Pattanayak, S. Sekhar, J. Biswal & M. Panda, Advocates.
[In W.P.(C) No. 7661 of 2020 ]

M/s. Sidheswar Mallik, P.C. Das, M. Mallik & S. Mallick, Advocates
[ In W.P.(C) No.6682 of 2020, W.P.(C) No.9555 of 2020 & W.P.(C) No.12165 of 2020]

M/s. Kishore Kumar Mohanty & S.K. Mohanta, Advocates.
[In W.P.(C) No. 15485 of 2020]

**For Opp. Parties :** Mr. S.N. Pattnaik,
Addl. Government Advocate

M/s. Satyabrata Mohanty-1, & T.K. Kamila, Advocates with
Mr. Ashok Kumar Panigrahi, Advocate
(For OLIC]

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**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**
**24th October, 2025**

**SASHIKANTA MISHRA, J.** All these writ applications involve common facts and law and being heard together, are disposed of by this common judgment.

2. For brevity, the facts of W.P.(C) No. 7661 of 2020 are being referred to in this judgment.

3. The petitioners, 16 in numbers, have filed this writ application seeking the following relief:

> *"It is therefore, most humbly prayed that this Hon'ble Court be graciously pleased to*
> *(i) Admit the writ application.*
> *(ii) Call for the record.*
> *(iii) Issue Rule Nisi calling upon the opposite parties to show cause as to why the order dated 25.11.2019 under Annexure-11 and 31.12.2019 under Annexure-12 shall not be quashed being illegal and arbitrary.*
> *(iv) If the opposite parties do not show cause or show insufficient cause issue a writ in the nature of certiorari or any other appropriate writ/writs, order/writs, direction/directions quashing the letter dated 25.11.2019 under Annexure-11 and 31.12.2019 under Annexure-12.*
> *(v) Issue a writ in the nature of mandamus or any other writ/writs direction/directions directing the opposite parties to regularize the services of the petitioners from the initial date of appointment and grant consequential service and financial benefit with retrospective effect as and when they complete six years of regular service as Junior Engineer (Mechanical) or contractual basis.*
> *(vi) And/or pass such other order/orders, direction/directions as this Hon'ble Court may deems fit and proper for the ends of justice.*
> *And for the said act of kindness, the petitioner as in duty bound shall ever pray."*

Be it noted that the original petitioner No.1- Manas Ranjan Samal, having died during pendency of this case, has been substituted by his legal representatives. Petitioner No.6-

Manas Ranjan Mohanty has retired during pendency of this writ application. Petitioner No.16- Gopabandhu Boitai was disengaged from service also during pendency of this writ application.

**FACTS**

4. An advertisement was issued on 09.11.2011 by the opposite party No.2 –Orissa Lift Irrigation Corporation Ltd. (OLIC) inviting applications from intending candidates to fill up different posts under Biju Krushak Vikas Yojana Deep Bore Well Secha Karyakrama (BKVY-DBSK) on contractual basis though a walk-in-interview. Twenty posts of Junior Engineer (Mechanical) were notified carrying consolidated remuneration of Rs.9300/-. The petitioners appeared in the interview held on 19.11.2011 whereafter, a list containing 87 candidates was prepared. Consequently, the petitioners were offered appointment as per letter dated 14.12.2011 followed by individual letters of posting issued on different dates.

4.1 It was mentioned in the letter of engagement that the engagement is purely for the purpose of Project

Management Unit (PMU) for Deep Bore Well Secha Karyakrama and has no relationship with regular establishment of OLIC. Further, the offer was said to be valid for a period of one year from the date of joining based on the terms of contract. The engagement of the petitioners was extended for a period of one year from time to time. On 05.02.2018, the petitioners, having completed 8 years of service in their respective posts submitted representation before the opposite party No.2 with prayer for regularization of their services. Since no action was taken they approached this Court in W.P.(C) No.2870 of 2019. By order dated 07.11.2019, this Court directed the opposite party authorities to consider the grievance of the petitioners within a period of two months. On 25.11.2019, the Joint Secretary to Government in Department of Water Resources wrote to the opposite party No.2 that the manpower for State Project Unit (SPU) and Divisional Project Unit (DPU) should be made on re-deployment and outsourcing basis. Therefore, the contractual engagement should be discouraged and replaced by outsourcing manpower before submission of subsequent

renewal. By order dated 31.12.2019, the opposite party No.2 rejected the representation of the petitioners on the ground that the same had no merit as the appointment of the petitioners was purely on contractual basis having no relationship with regular establishment of OLIC.

4.2. According to the petitioners, though there are regular vacancies available, the action of the authorities in not regularizing the services of the petitioners is illegal and unacceptable. By order dated 29.02.2020, the opposite party No.2 decided not to extend the engagement of the petitioners from 31.03.2020. Prior to that, the opposite party No.2 issued a request for a proposal on 12.03.2020 for selection of Facility Management Agency to provide facility management services on outsourcing basis through a service contract. Accordingly, 35 posts of Junior Engineer (Mechanical) were advertised including the vacancies against which the petitioners have been continuing since 2011. Further, another set of contractual employees i.e., Diploma Holder Engineers, selected and empaneled by the Government with their services placed under OLIC were

terminated from service. They approached this Court in OJC No. 11308 of 2001. This Court, by order dated 06.03.2019 directed the authorities to consider their case and extend the benefit of regularization and also scale of pay as admissible. The order not being complied, contempt applications were filed and ultimately by order dated 13.12.2021, said petitioners were regularized. The petitioners stand on the same footing. It is stated that the petitioners are working against Group-B posts and having completed six years of continuous service, are entitled to be regularized in terms of the Rules framed by the State Government for regularization of contractual employees in 2013.

4.3. Be it noted that the petitioners in other writ applications (W.P.(C) Nos.6682, 9555 & 15485 of 2020) are also working as Junior Engineer (Mechanical) and petitioners in W.P.(C) No. 12165 of 2020 have been working as Asst. Engineer (Civil) being engaged pursuant to the same advertisement i.e., 09.02.2011. All other facts relating to their engagement and service conditions are the same as the petitioners in the lead case.

**STAND OF THE STATE GOVERNMENT**

5. The State Government has filed a counter affidavit refuting the averments of the writ application as follows:

5.1 BKVY-DBSK started its operation during the year 2010-11 under OLIC for installation of Deep Bore Wells in a massive way in hard rock/hilly tracts of 17 districts in the first phase. Later, it was extended to 26 districts during the year 2011-12. Since it was not possible to operationalize the said scheme with the existing staff of OLIC, a proposal was submitted to Finance Department for approval of PMU so that additional manpower can be hired on redeployment and outsourcing basis. The Finance Department approved the proposal and communicated to OLIC vide letter dated 27.10.2011 for setting up a State Project Unit (SPU) and 10 nos. of Divisional Project Units (DPU) for effective monitoring of works under BKVY-DBSK by sanctioning 26 posts for SPU and 100 posts for 10 DPUs. Such sanction was with stipulation that engagement for the said post shall be on redeployment from OLIC/outsourcing basis. The person concerned who desires to join will submit an undertaking in

terms of Finance Department Circular No.55764/F dated 31.12.2004 and engagement would be for the project period only and there would be no claim whatsoever beyond the project period.

5.2 After extending the scheme to 26 districts, another proposal was submitted to Finance Department for constitution of 5 more DPUs and creation of posts. Finance Department in its letter dated 14.02.2012 agreed with the proposal and created 50 posts, out of which 40 posts were to be filled up on redeployment basis and then on outsourcing basis by OLIC.

5.3. As per concurrence of the Finance Department, OLIC was instructed to engage personnel on redeployment from OLIC/outsourcing basis and not on contractual basis. The Government had also communicated the observations of Finance Department to opposite party No.2 regarding proposal of extension of SPU and DPU for the period from 01.04.2019 to 31.03.2020 in the following manner.

> *"Man power for SPU and DPU should be made on redeployment and outsourcing basis. Therefore, the Contractual engagement should be discouraged and*

*replaced by outsourcing manpower before submission of subsequent renewal."*

As per the terms and conditions laid down in Clause 12(1) of the agreement, the contractual engagement of the petitioners has been ceased w.e.f. 31.03.2020. However, in view of the interim order passed by this Court in the present writ application, the petitioners have been allowed to work in OLIC awaiting further orders.

5.4. Finance Department had agreed for constitution of the SPU and DPU on the condition that the posts shall be filled up by redeployment on outsourcing basis and the candidates who desire to join will submit an undertaking in terms of Finance Department Circular dated 31.12.2004 and engagement is for the project period only and there will be no claim whatsoever beyond the project period. Accordingly, the petitioners submitted undertaking that in future they shall not claim regular scale of pay and other allowances. As such, the claim of the petitioners for regularisation after completion of six years is devoid of merit.

**STAND OF THE OLIC**

6. OLIC has filed counter more or less on similar lines as the State. It is stated that the contractual engagement of the petitioners were purely for the PMU of the scheme having no relationship with regular establishment of OLIC. The engagement of the petitioners was on contract basis with monthly consolidated remuneration of Rs.9,300/- and offer was for a period of one year from the date of joining. Once the petitioners accepted the engagement letter without protest and submitted individual undertakings that in future they shall not claim regular scale of pay and other allowances for continuing in the said post, they are estopped to claim regularisation. As such, their claim of regularisation is misconceived.

6.1 The engagement of the petitioners was initially for a period of one year and was extended for similar period with concurrence of Finance Department. In the engagement orders issued to the petitioners, it is clearly stipulated that the engagement is for the scheme and has no relationship with the regular establishment of OLIC. Subsequently, by

letter dated 25.11.2019, the Government had directed that the manpower for SPU and DPU should be made on redeployment and outsourcing basis and contractual engagement should be discouraged and replaced by outsourcing manpower before submission of subsequent renewal. As per clause-12.1 of the agreement signed by the petitioners, their contractual engagement has ceased w.e.f. 29.02.2020 but they are continuing in view of interim order passed by this Court. The claim for regularisation laid by the petitioners is contrary to law and as per the judgment of the Supreme Court in **State of Karnataka vs. Uma Devi**[1], they have no right to continue in the post after the contract period is over. As regards the Contractual Rules, 2013, the same is not applicable as the petitioners were appointed much prior to coming into force of the same. Moreover, the petitioners are engaged in a project under a Scheme.

**SUBMISSIONS**

7. Heard Mr. B. Routray, learned Senior Counsel with Mr. J. Biswal, learned counsel for the petitioners, who

[1] **AIR 2006 SC 1806**

led arguments on behalf of the petitioners in the connected writ applications also; Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State; Mr. S. Mohanty, learned counsel appearing for OLIC (opposite party No.2).

8. Mr. Routray would argue that there is no dispute that the petitioners were engaged on contractual basis and their services were renewed from time to time. This shows that the work is available in the establishment. Only because the petitioners laid claim for regularization of services, the authorities, adopting a vindictive attitude decided to terminate their services by issuing the impugned order under Annexure-15. Mr. Routray further submits that the authorities have proposed to engage persons on outsourcing basis against the posts in which the petitioners are engaged, which is contrary to law that one set of temporary employees cannot be replaced by another set.

9. Mr. Routray draws attention of the Court to the case of Prasanta Kishore Pal and Mrutyunjaya Laha, who are identically placed as the petitioners, inasmuch as both of them were engaged along with the petitioners, but have

since been regularized. This, according to Mr. Routray amounts to gross discrimination.

10. Mr. Routray has cited the following judgments in support of his contentions:

> ***"1. Chander Mohan Negi v. State of H.P.[2]***
> ***2. Jaggo v. Union of India[3]***
> ***3. Shripal v. Nagar Nigam[4]***
> ***4. Balabhadra Majhi vs. State of Odisha and Ors.[5]"***

11. Mr. S.N. Pattnaik, learned Addl. Government Advocate on the other hand, would argue that the petitioners were engaged under a Scheme for a particular period. It is immaterial that their engagements were renewed from time to time. Mere renewal does not take away the fact that their engagements were temporary and on contract basis and by signing undertaking that they shall not claim regularization in future. As such, they are estopped to lay claim for regularization. Mr. Pattnaik further argues that in any case the contractual engagements have ceased and advertisement was issued for 8 regular posts of Junior

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[2] **(2020) 5 SCC 732**
[3] **2024 SCC OnLine SC 3826**
[4] **2025 SCC OnLine SC 221**
[5] **MANU/OR/0949/2022**

Engineer (Mechanical) on 06.04.2023. The selection process has been completed but no order of appointment has been issued because of interim order dated 08.05.2023 passed by this Court in W.P.(C) No. 13030 of 2023.

12. Mr. Mohanty, learned counsel appearing for OLIC makes more or less similar arguments as the State Counsel and additionally submits that OLIC being a public sector undertaking has to abide by the direction of the State Government. Since the State Government decided to replace contractual employees with outsourced employees, fresh advertisement was issued and selection process was undertaken. He further submits that the petitioners were aware of the nature of their engagement from the very beginning and had also signed undertaking for not claiming regularization in future. As such, they are estopped to do so at this stage.

**ANALYSIS AND FINDINGS**

13. The facts as laid are not disputed. The petitioners applied for engagement pursuant to advertisement dated 09.11.2011 and having undergone a selection process were

engaged. Letter dated 14.12.2011 issued to the selected candidates mentions the following:

> *"Consequent upon your provisional selection for the aforesaid position the Managing Director, Orissa Lift Irrigation Corporation Limited is pleased to offer you to join in Project Management Unit (DPU) of "BKVY Deep Bore Well Secha Karyakrama on contract basis with monthly/consolidated remuneration of Rs.9300/-(Rupees nine thousand three hundred) only per month. This offer is for a period of one year from the date of joining based on the terms of contract subject to verification of all original documents/testimonials stated in your original application. The engagement is purely for the purpose of PMU for Deep Bore Well Secha Karyakrama and has no relationship with regular establishment of OLIC"*

14. It is also not disputed that the petitioners submitted undertakings not to claim regular scale of pay in future. Their engagements were extended/renewed from time to time on yearly basis. From the stand taken by the State as well as OLIC, it is evident that the basic objection raised by them is to the effect that the engagement was for a project under a scheme called BKVY-DBSK. The order dated 27.10.2011 of the Government in Department of Water Resources, copy of which is enclosed as Annexure-A/2 to the counter filed by the OLIC, contains the modalities for

filling up the posts. After laying down the modalities, the order states as follows:

> *"The above engagement is only for the project period and person concerned who desires to join will submit an undertaking in terms of Finance Deptt. Circular No.55764-F dt:31.12.2004 (copy enclosed). There will be no claim whatsoever beyond the project period."*

15. So, it is basically contended that the engagement was only for the project period. A model form for a written undertaking is also enclosed, inter alia, stating as follows:

> *"Further, I do hereby give an undertaking that in future I shall not claim regular scale of pay and other allowances for continuing in the said post merely on the ground that I have been given a contract appointment and my contractual appointment has been extended from time to time."*

16. Thus, two things are evident: - firstly, the engagement was for the project period only and secondly, the petitioners are bound by the undertaking submitted by them to not claim regularization in future. As to the first point, this Court found that despite styling the work as a 'Project' there is no gainsaying the fact that the work in which the petitioners were engaged, i.e., excavation of Deep Bore Wells in hilly tracts, is intrinsic to the work of OLIC. In

other words, the work was not something beyond the regular work of OLIC. That apart, the very fact that the contracts were renewed every year till 2019 implies availability/continuity of the work. It is not as if the work was a one-time job undertaken for a specific period. Therefore, notwithstanding the nomenclature used, the materials on record clearly reveal that the work is perennial in nature and inherent to the regular work of OLIC. This becomes all the more evident from the fact that the contractual engagees like the petitioners were deputed to different districts where they rendered the same work as the regular employees. In the advertisement issued, 8 posts of Junior Engineer (Mechanical) have been notified for being filled up and it is not demonstrated that these posts are meant for persons to be engaged in work distinct and separate from the work being done by the contractual appointees.

17. After going through the materials on record which includes the decision of the Finance Department as per the note sheet enclosed vide Annexure-A/2 series, this Court is

left with no doubt that the so-called decision to engage persons under the Scheme 'on outsourcing' basis is nothing but a subterfuge, evidently intended to disown the responsibility of adding these persons to the regular establishment. Moreover, the fact that the Finance Department also allowed redeployment of regular staff of OLIC to the same work, indicates that the work is inherent to the regular work of OLIC. Therefore, for the authorities to now wash off their hands by labeling the work as temporary cannot be accepted. This is being said also for the reason that the very same project has been allowed to continue though in the garb of engaging personnel on outsourcing basis instead of contract basis. This, according to the considered view of this Court, is also a subterfuge. In any case, it is the settled law that one set of temporary employees cannot be replaced by another set of temporary employees. Reference may be had to the judgment of the Supreme Court in the case of ***State of Haryana and others***

***vs. Piara Singh and others***[6], where the following observations are noteworthy.

> *"46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."*

18. The ratio decided in ***Umadevi*** (supra) has been relied upon by opposite parties but then the Supreme Court in the case of ***Jaggo*** (Supra) dealt with it in the following words:

> *"20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in Vinod Kumar v. Union of India, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the*

[6] **(1992) 4 SCC 118**

*capacity of the regular employee. The relevant paras of this judgment have been reproduced below:*

> *"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).*
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> *7. The judgment in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case…"*

It has neither been stated nor demonstrated that initial engagements of the petitioners were illegal in any manner. On the contrary, the engagements were against posts sanctioned by Finance Department and on the basis of their performance in a walk-in-interview. The argument advanced on behalf of the opposite parties is therefore, not tenable.

19. This is a case where persons rendering regular work in the establishment have been classified as purely temporary or contractual employees having no connection with the regular establishment. This approach has also been frowned upon by the Supreme Court in the aforementioned case of ***Jaggo*** (supra), relying upon the landmark judgment of the US Court of Appeals for the 9th circuit in the case of **Vizcaino v. Microsoft Corporation**[7] with the following observations:

> *"**24.** The landmark judgment of the United State in the case of Vizcaino v. Microsoft Corporation[7] serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment."*

**[7] 97 F.3d 1187 (9th Cir.1996)**

20. Going further, the Supreme Court in the said case, expressed its concern that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. It was observed as follows:

> "***25.*** *It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*
> • ***Misuse of "Temporary" Labels:*** *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*
> • ***Arbitrary Termination:*** *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*
> • ***Lack of Career Progression:*** *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*
> • ***Using Outsourcing as a Shield:*** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates*

*a deliberate effort to bypass the obligation to offer regular employment.*

• ***Denial of Basic Rights and Benefits:*** *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances."*

21. Finally, again referring to ***Umadevi*** (supra) it was held as follows:

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

*27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended*

*periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."*

22. In view of the above authoritative pronouncement of the Supreme Court, nothing really survives for adjudication by this Court in the given facts and circumstances of the case

23. The judgment in ***Jaggo*** (supra) was reiterated by the Supreme Court in the case of ***Shripal*** (supra).

24. Much has been argued on behalf of the State as well as OLIC that the petitioners are estopped to claim regularisation in view of the undertakings submitted by them at the time of their initial engagement. This Court is not persuaded enough to place any reliance on such undertakings for the reason that same would have no force in law being submitted by persons with practically no bargaining power. When unequals are pitted against each

other, undertakings of such nature can have no real value. This is also the settled position of law. In this regard, reference may be had to the oft-quoted judgment of the Supreme Court in the case of **Central Inland Water Transport Corpn. v. Brojo Nath Ganguly**[8]. The following observations are noteworthy:

> *"88. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognised, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, Section 138(2) of the German Civil Code provides that a transaction is void "when a person" exploits "the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages ... which are obviously disproportionate to the performance given in return". The position according to the French law is very much the same.*
>
> *89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong*

[8] **(1986) 3 SCC 156**

*trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and*

*unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."*

25. Therefore, only because the petitioners submitted the so-called undertakings cannot estopp them from claiming regularisation. It need not be overemphasized that right to livelihood is a fundamental right guaranteed under Article 21 of the Constitution. So, to apply the principle of estoppel by brandishing the undertaking submitted by the petitioners would tantamount to violating their fundamental right under Article 21 of the Constitution. It goes without saying that as between the right under Article 21 and the so-called undertaking, it is the former that would prevail.

26. This is a case of persons who have rendered apparently satisfactory work to the establishment for long periods of time without the pay attached to their counter-parts in the regular establishment. If this is not exploitation, then what is? The State cannot deny such pay and create disparity among its employees. What the authorities have done by labelling petitioners as temporary employees is to

create a class within a class inasmuch as two sets of employees, one regular and the other temporary, are engaged for the same work. While the former are handsomely paid, the latter are doled out meagre remuneration not commensurate with their labours for the State.

27. It is also brought on record that two persons namely, Prasanta Kishore Pal and Mrutyunjaya Laha, who were engaged along with the petitioners have since been regularized. The State Counsel has defended such action by submitting that their regularisation was as per the order passed by this Court in the writ application filed by them. This argument is not acceptable for two reasons- firstly, regularisation, for whatever reason, implies that the authorities acknowledge the fact that both the said persons were rendering service akin to their counterparts in the regular establishment and secondly, there is nothing to distinguish said persons from the petitioners.

28. From the foregoing narration, it is manifestly clear that the petitioners have discharged duties in work essential

and inherent to the establishment of the OLIC since 2011. That such work is still available is evidenced from the fact that the same posts have been freshly advertised albeit to be filled up on regular basis. Most significantly, the so-called vacancies in the regular cadre have not been filled up for all these years. On the other hand, the petitioners, despite rendering continuous and apparently satisfactory service, have been deprived of the scale of pay and other concomitants of employment available to their regular counterparts, which is nothing but an institutionalized exploitation of the work force. The state is supposed to be a model employer, as has been repeatedly emphasized by the superior Courts of this country. It cannot be seen to be adopting any subterfuge to deny and deprive persons rendering work for long periods of time like a private organization. For all these reasons, this Court is convinced that the claim of the petitioners for regularization has been laid on solid ground and cannot simply be ignored.

**CONCLUSION**

29. In the result, the writ petitions are allowed. The orders dated 25.11.2019 (Annexure-11) and 31.12.2019 (Annexure-12) are hereby quashed. The opposite party authorities are directed to regularise the services of the petitioners against the available posts subject to their eligibility within a period of two months from today. Upon such regularisation, they shall be entitled to salary and other service benefits admissible to regular employees of OLIC including the differential salary from the date of their regularisation. Such regularisation shall be effective from the date of completion of six years of continuous service of the petitioners from the date of their initial engagement. As regards the legal heirs of petitioner No.1- Manas Ranjan Samal in W.P.(C) No. 7661 of 2020, he shall be deemed to have been regularised also from the above mentioned date. His legal representatives shall be entitled to the arrears of differential salary that he would have been entitled to till the date of his death. Similarly, petitioner No.6- Manas Ranjan Mohanty shall be deemed to have been regularised from the

aforementioned date and the arrear differential salary on account of such regularisation shall be paid to him till the date of his retirement. In so far as petitioner No.16-Gopabandhu Boitai is concerned, he having been disengaged but not specifically challenged the order of his disengagement, no relief can be granted to him. In case, adequate number of regular posts are not available to adjust the petitioners in the manner directed by this Court, supernumerary posts shall be created to adjust the petitioners which shall stand abolished upon their superannuation or vacation for any other reason.

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***Sashikanta Mishra,***
***Judge***

***Orissa High Court, Cuttack.***
***The 24th October, 2025/ A.K. Rana, P.A.***

Signature Not Verified

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Date: 24-Oct-2025 19:29:26