



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 12353 OF 2019

PRADEEP DAMODHAR LIMBKAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

WITH

CIVIL APPLICATION NO. 9297 OF 2024

IN WP/12353/2019

....

Advocate for the Petitioner : Mr. Natu Sharad V

AGP for Respondent/State : Mrs. Chaitali Choudhari Kutti

Advocate for Respondent No.2 : Mr. Ingole R. K.

...

**CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

DATE : 05.12.2025

PER COURT :

. Heard.

2. This petition has been filed for the following main relief :

“C : By issuing appropriate writ, order or directions in the like nature, the respondent no.2 may be directed to regularize the services of the petitioners as Pump Operators from the date of appointment.”

3. The petitioners are seven in number. Way back on 03.07.2008, the Respondent/Municipal Corporation issued an advertisement for filling up 12 post of Pump Operators. The petitioners applied in response to the said advertisement. The petitioners held the requisite qualification to occupy the said post. They were interviewed. They cleared the complete selection/recruitment process. From July 2008,

the petitioners were given postings to work as 'Pump Operators' for six months. Thereafter, their appointments continued from time to time with technical breaks of one day each, till date. As such the petitioners have so far served for 18 years. The posts advertised were stated to be ad-hoc and a salary was lumpsum.

4. The posts of 'Plumber/Fitter have been created. Only three posts of 'Pump Operators' are vacant. As per the revised staffing pattern, these posts and newly created Plumber/Fitter posts were supposed to be filled up by promotion and direct recruitment. The posts of Plumber/Fitter are supposed to be filled up by direct recruitment whereas the posts of 'Pump Operator' are to be filled up by promotion and by recruitment in the ratio of 75% and 25% respectively.

5. The request of the petitioners to absorb them on the posts of 'Pump Operators' or on any other suitable post, has been turned down by the Respondent-Corporation for the reason that, the post of 'Pump Operators' was to be filled up by promotion.

6. The learned Advocate for the Respondent/Corporation would submit that no posts are available to accommodate the petitioners. He would further submit that the petitioners' appointments were for a temporary period. No permanent posts were available. The petitioners need to apply in recruitment process, which may be undertaken by the A.M.C. He would further submit that for any appointments to be made by the Corporation, either previous or *ex-post facto* , sanction of the State Government is a must. He, therefore, urge for the dismissal of the

Writ Petition.

7. Almost all the facts are not in dispute. For little over 18 years, the petitioners have been serving with the Respondent/Corporation . True, with a technical break of one day on paper. Their appointments were made by following due recruitment process. An advertisement had been published for filling up posts of 'Pump Operator'. Undisputedly, the petitioners hold requisite qualification. The only fact which comes in their way was that their appointments were for a temporary period of six months and on a consolidated pay. With the passage of time, their pay has been increased. Now they are paid Rs.17,000/- per month as a consolidated salary. It is reiterated that since, day one of their appointment, they have been continuously serving, with a technical break of one day each time.

8. The Apex Court in the case of **Jaggo vs. Union of India and Others** reported in **AIR 2025 SC 296** observed thus :

“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 and Ors. Etc. v. Union of India and Ors. [2024] 1

S.C.R. 1230, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this 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).

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.

21. The High Court placed undue emphasis on the initial label of the Appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job

security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

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

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

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

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."

9. We have perused the relevant sections of Chapter-IV of The Maharashtra Municipal Corporations Act, 1949. For better appreciation,

certain provisions of the said Chapter need to be reproduced below :

“53. Power of Appointment in whom to vest :

(1) The power of appointing municipal officers, whether temporary or permanent, [to the posts equivalent to or higher in rank than the post of the Assistant Municipal Commissioner shall vest in the Corporation:

Provided that temporary appointments for loan works [to the posts equivalent to or higher in rank than the post of the Assistant Municipal Commissioner] may be made for a period of not more than six months by the Commissioner with the previous sanction of the Standing Committee on condition that every such appointment shall forthwith be reported by the Commissioner to the Corporation and no such appointment shall be renewed on the expiry of the said period of six months without the previous sanction of the Corporation.

(2) Save as otherwise provided in sub-section (1), the power of appointing municipal officers and servants, whether temporary or permanent, under the immediate control of the Municipal Chief Auditor and the Municipal Secretary shall vest in the Municipal Chief Auditor or the Municipal Secretary, as the case may be, subject, in either case, to the approval of the Standing Committee unless the said Committee in any particular case or class of cases dispenses with this requirement.

(3) Save as otherwise provided in this Act, the power of appointing municipal officers and servants whether permanent or temporary vests in the Commissioner:

Provided that such power in respect of permanent appointments shall be subject to the statement for the time being in force prepared and sanctioned under section 51 :

Provided further that no temporary appointment shall be made by the Commissioner for any period exceeding six months and no such appointment [carrying a salary equivalent to higher in rank than the post of clerk] shall be renewed by the Commissioner on the expiry of the said period of six months without the previous sanction of the Standing Committee.”

10. In view of the scheme of Chapter-IV, it is clear that for the recruitment to the post of 'Plumber' or 'Pump Operator', neither previous nor *ex-post facto* sanction of the State Government is required. Admittedly, in this case, Staff Selection Committee of the Respondent/Corporation by passing a resolution has requested for absorption of the petitioners on any suitable post with

Respondent/Corporation.

11. Relying on the judgment of the Apex Court in the case of **Jaggo vs. Union of India and Others** (supra) and the fact that the petitioners have been serving with the Respondent/Corporation for a little over 18 years and their recruitment was by following due recruitment process, the petitioners did hold the requisite qualification, we direct the Respondent/Corporation to appoint/absorb the petitioners permanently on the said posts (Plumber/Fitter) w.e.f. 14.02.2023 i.e the day on which those posts were created. However, actual pay-scales and the benefits attached thereto be paid to the petitioners with effect from the date of this order.

12. The Writ Petition is allowed in above terms and the Civil Application stands disposed of.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

vsj..