



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 120 OF 2021

1. Shri Domnic Furtado (ST), Aged 41
 2. Shri Joaquim Fernandes, Aged 50
 3. Shri Ganesh Velip, Aged 47
 4. Shri Shivanand Shinde, Aged 39
 5. Shri Shivanand Madar, Aged 47
 6. Shri Ismail Shaikh, Aged 51
 7. Shri Raosaheb M. Madar, Aged 97
 8. Shri Dilip G. Madar, Aged 48
 9. Shri Maruthi A. Madar, Aged 39
 10. Shri Dundappa Ganpat Tagdi, Aged 45
 11. Shri Shankar R. Zamune, Aged 39
 12. Shri Gajanan Zamune, Aged 48
- C/o. Margao Municipal Council, Margao, Goa. ... Petitioners

V e r s u s

1. State of Goa, Through its Secretary,
Secretariat, Porvorim, Goa.
2. Department of Urban Development,
Through its Director Officer: Dempo Towers,
1st Floor, EDC Patto Plaza, Panaji-Goa 403 001.
3. Margao Municipal Council, Through its
Chief Officer, Margao, Goa. ... Respondents

Mr. Shivraj Gaonkar, Advocate *for the Petitioners.*

Mr. D. Pangam, Advocate General *with Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1 and 2.*

Mr. Somnath Karpe, Advocate *with Mr. Anand Shirodkar, Advocate for Respondent No. 3.*

**CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATE: 4th AUGUST 2025

ORAL JUDGMENT *(Per Bharati Dangre, J.)*

1. The twelve Petitioners before us appointed as Daily Wagers with the Margao Municipal Council, rely upon the Office Memorandum dated 29.10.1990 issued by the Government of Goa, where a decision was taken by the Government to consider regularization of employees, who have completed more than five years of continuous service either as NMRs/Daily Wagers subject to the condition that the work to be provided to them should be available on continuous basis and the persons should qualify for the post as per the Recruitment Rules.

2. The very same direction was reiterated in form of instructions issued by the Government of Goa in the Office Memorandum dated 07.06.2000, to the following effect :

“The Government vide O.M. No.9/1/90-Fin (R & C) dated 9/10/1990 from Finance (Rev & control) Department has issued

instructions to the effect that once the employee completes 5 years of continuous service as NMRS/Daily Wager, he/she would automatically qualify for being considered for regularization subject to the conditions laid down therein. Now the Government has further decided that those who have completed 5 years in Government service are to be regularized.”

It is the case of the Petitioners that though they were appointed on Daily Wage basis to carry out the work of garbage collectors and act as road workers, their salaries were paid on monthly basis. Their appointment was extended on month to month basis right from their appointment.

In the year 2006, 39 Daily Wagers who had completed continuous five years of service, were regularised by the Margao Municipal Council, by appointing them on probation period of two years and also with a stipulation that they shall carry out the work/duty as entrusted to them by the employer and by making the relevant Rules/Agreement applicable to them.

3. It is the specific case of the Petitioners that a settlement dated 08.05.2014 was arrived at under Section 2(P) read with Section 18(1) of the Industrial Dispute Act, 1947, between the Municipal Council and their workers/employees represented by the Goa Municipal Council Association, Margao, in a charter of demands and the terms of settlement included the following :

“D) Demand regarding regularization of Daily rated employees/Workers.

It is agreed between the parties that as per the Circular No.9/58/2001-PER-Part dated 10/02/2014 received from Department of Personnel, Government of Goa it is agreed to regularize those employees/workers who are working as daily wages for five years and above.”

The Memorandum of Settlement recorded that the settlement shall operate for three years from 01.07.2013 to 30.06.2016 and shall continue to remain in force until the same is terminated by either party in writing in accordance with law.

4. In the backdrop of this, the time was ripe for implementation of the settlement and this came for discussion in the meeting of the Municipal Council held on 18.08.2014, when it was resolved that a list of eligible candidates shall be prepared and submitted for regularisation to the Director (Urban Development) for its approval and once the approval is obtained, the eligible staff shall be regularised.

The Department of Urban Development, with respect to the subject, of 'Approval for regularisation' informed the Chief Officer that Departmental Promotion Committee (DPC) shall be constituted to arrive at an appropriate decision and reference was also made to the office Memorandum dated 29.10.1990 and 07.06.2000, issued by the Department of Personnel, Secretary of Panaji, which shall lay down the guidelines for Daily Wage staff/Workmen.

Thereafter, in the meeting of the Margao Municipal Council held on 19.05.2017, the following Resolution was unanimously passed :

“Item No. 1 : To discuss and decide on regularization of Daily wage workers who have completed 5 years and above.

Resolution No. 4598:-

The Council unanimously resolved to propose regularization of the workers, who have finished more than four and half years (above 4.5 years) of service to the council and those who are below 60 years of age shall be recommended.”

Pursuant thereto, DPC was convened on 23.07.2019 and this was informed to the Director (Urban Development) by a letter dated 11.07.2019 and the DPC extended to consideration of various posts which included one post of Municipal Inspector, one post of LDC, three posts of Drivers, four posts of Road Workers, two posts of Sweepers, one post of Garden Coolie and 16 posts of Workers.

5. The Departmental Promotion Committee comprising of the Chief Officer of the Margao Municipal Council and Additional Director of the Municipal Administration, considered the candidates including the Petitioners and conveyed its consent for regularizing the Petitioners by following the relevant Recruitment Rules and taking into consideration 16 posts of Workers, which were vacant.

With reference to the settlement signed between the Goa Municipal Employees Association, Margao, on 08.05.2014 to regularise the Daily wagers who have completed five years of service and which

was approved by the Council in its meeting on 18.08.2014 under Resolution no. 4237 and since the Director had issued instructions to conduct a DPC, the Committee decided to appoint 14 Daily wage workers and two dependant workers to the post of regular employees and this included the present Petitioners.

6. On 21.10.2019, the Additional Director (Urban Development) addressed communication to the Chief Officer, Margao Municipal Council, directing him to furnish details as in the performa since the Government intended to take a policy decision for regularisation of those employees in the Municipal Council/Corporation of the City of Panaji, who have completed more than five years and above.

The information/details of the employees were complied and those with ten and twelve years above were directed to be appointed on priority basis to be followed by those who had completed more than five years of service.

The Chief Officer of Margao Municipal Council promptly complied with the aforesaid and forwarded the requisite data.

7. The aforesaid exercise resulted in issuance of a Memorandum by Margao Municipal Council on 24.12.2019, with reference to the recommendations of the DPC as deemed to have been duly approved by the Council in the wake of the settlement signed between the Goa Municipal Employees Association on 08.05.2014 and 11 persons who

were working with the Council on Daily wage basis workers came to be appointed to the post of 'worker' on purely temporary basis in the pay band of Rs.5200-2020 plus Grade Pay Rs.1800/-.

This included the Petitioners who joined their duties by submitting joining report. The Municipal Council forwarded a communication to the Director of Urban Development, annexing the decision of the DPC held on 23.07.2019 along with its Minutes and also with the copy of Recruitment Rules.

8. On 23.04.2020, the Department of Urban Department addressed a communication to the Chief Officer, for the first time asking information whether the Council had advertised the post of workers and the procedure has been followed as per the guidelines issued by the Government from time to time and the report was directed to be submitted along with the copy of the advertisement. The letter also directed the Chief Officer to keep the regularisation order issued to 14 workers in abeyance and ultimately on 10.06.2020, the Chief Officer issued an order, keeping the orders of appointment/regularisation of the workers on hold.

Subsequent to the said order, the Municipal Council issued appointment order to the Petitioner as Daily wagers though paid on monthly basis and the Petitioners continued to protest, seeking lifting of the Order keeping their regularisation in abeyance, however,

continued to work on monthly wage basis with a monthly gross salary of approximately of Rs.13,000/- whereas the regular workers were getting paid with more than Rs.35,000/- per month.

9. Alleging that the disparity exists in the regular employees discharging the same duties, against that of the Petitioners and despite the policy decision of the State Government to regularise the workers who were working for NMRs/Daily Wage for more than five years, the benefit having not been extended to Petitioners, they continued to prefer representations and when no heed was paid, they have approached this Court raising a challenge to the Order passed by the Director of Municipal Administration directing their orders to be kept in abeyance and thereafter praying for a direction to the Respondents to implement the orders of appointment dated 02.03.2020.

10. We have heard Mr. Shivraj Gaonkar for the Petitioner in support of the pleadings in the Petition and Mr. Karpe, along with Mr. Anand Shirodkar representing the Margao Municipal Council, who would rely upon the affidavit filed by the Chief Officer of the Council, wherein it is admitted that the Petitioner nos. 1 to 12 were engaged as Daily wage workers with the Respondents for past many years and their services were requisitioned as and when required and the wages were paid by the Margao Municipal Council. There is no denial to the fact that there was a Memorandum of Settlement dated 08.05.2014 which came to be

drawn in terms of provisions of Section 2(P) read with Section 18(1) of the Industrial Dispute Act, 1947, wherein it was agreed that the Daily wage workers who have worked for the Margao Municipal Council for more than five years would be regularised.

It is admitted that accordingly a process of regularisation for these workers was initiated by Margao Municipal Council and Resolution being passed, to the effect that a Departmental Committee/Selection Committee shall be constituted to take the initiative for filling up of the posts.

It is also admitted that on 19.05.2017, the Municipal Council unanimously resolved to propose regularisation of the Petitioners in the year 2017, as some of the Daily wage workers were already regularised. Further, since there were vacancies for the post of workers, the Municipal Council addressed letter to the Additional Director of Urban Development informing them about the conduct of the DPC and accordingly the DPC was held on 23.07.2019, with the Additional Director of Municipal Administration being a part of the same and upon due deliberation, 16 Daily wage workers were recommended for regularisation, as 16 posts were lying vacant.

11. The Municipal Council has therefore supported the case of the Petitioners by submitting that the procedure which was followed for regularisation of the service of the Petitioners was the same which was

followed in the year 2017 when several other Daily wage workers were regularised. It is categorically admitted that the advertisement inviting applications for the posts were not issued by the Respondents at the time of regularisation of the Petitioners but prior to their regularisation, DPC was convened and the Selection Committee recommended the names of the Petitioners for being regularised in its meeting held on 30.07.2019.

12. The learned Advocate General marked his appearance on behalf of the Director of Municipal Administration who has filed an affidavit, adopting a stand that the appointment orders issued to the Petitioners are not '*valid appointment orders*' as the vacancies were not advertised prior to the issuance of the appointment orders and the orders were issued in violation of the mandate of the constitution and, therefore, the appointment orders are illegal.

Stating that the illegal appointments of the Petitioners cannot be regularised, reliance is placed upon the decision of the Apex Court in the case of **Secretary, State of Karnataka vs. Umadevi**¹, wherein it is held that regularisation is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution and since the Petitioners did not have vested right of regularisation, it is prayed that the Petition be dismissed.

¹ (2006) 4 SCC 1

The learned Advocate General appearing for the Respondent no. 2 reiterate that the appointment orders issued in favour of the Petitioners was without approval of the Respondents and he would submit that the Dearness Allowance component of the workers is borne by the State of Government and, therefore, the approval of the Government is necessary for the issuance of orders.

13. In the background facts to which we have made reference along with the arguments canvassed, it is to be noted that the Petitioners are working as Daily wage workers/Garbage Collectors, Road Workers with Margao Municipal Council for a considerable length of time and it is in the wake of the policy of the State Government to regularise the employees working for more than five years on NMRs/Daily wages, the Municipal Council has issued orders in their favour, appointing them to the post of workers purely on temporary basis in the pay band of 5200-2020 plus Grade Pay Rs.1800/- (level-1) plus allowances and the order indicating that they shall be appointed on probation of two years from the date of acceptance of their documents.

It is these orders of appointment in favour of the Petitioners which have been directed to be kept in abeyance by the Department of Urban Development on the pretext that there was no advertisement issued, while issuing appointment orders in their favour appointing them to the post of worker.

We must at the outset, note that this is in utter ignorance of the Memorandum of Settlement between the Margao Municipal Council and the Goa Municipal Council Employees Association being agreed to be a settlement under Section 2(P) read with Section 18(1) of the Industrial Disputes Act, 1947, where amongst various other terms of settlement, when the Association submitted the charter of demands, and pursuant to the discussions/negotiations held by taking into consideration the financial burden which would be cast upon the Council, the terms of settlement were arrived at and inked by the respective parties.

Dealing with the financial burden likely to be created in the wake of acceptance of the said demands, it was recorded in the Memorandum of Settlement that the Association shall make every endeavour in their efforts to increase the revenue of the Council so that it can consider the conditions as demanded by the Association in terms of the charter of demands. The Association promised the Council that they will ensure that their employees/workers will put their best efforts to increase their revenue and shall render their full cooperation.

In the wake of assurance of full cooperation by the Association and its members, discussions/negotiations of the charter demands ensued and the terms of Settlement, which included acceptance of the demand for increase in allowances, flag allowances, washing

allowances, garbage allowances, tree cutting allowances, railway allowances, etc., as regards the general demands, with respect to Grade Pay, MACP benefits, received acceptance, one of the demand being regularisation of employees/workers working as Daily wagers for five years or above in the wake of the Circular dated 10.02.2014 received from the Department of Personnel, Government of Goa.

14. We are dismayed by the fact that despite the Government of Goa itself encouraging regularisation of its employees, vide its Office Memorandum dated 29.10.1990 and on 07.06.2000, reiterated by the Department of Personnel, Secretary, the State Government is opposing the regularisation of the Petitioners and specifically when they are already regularised in their services and started working on the said post on resuming their duties and this regularisation was purely based on the guidelines of the State Government encouraging regularisation of NMR/Daily wage workers, who have completed more than five years of continuous service.

The Municipal Council, as an employer, was satisfied that the Petitioners complied with the stipulation of completion of more than five years of service and in fact as advised by the Director of Municipal Administration, convened the Departmental/Selection Committee of which the Additional Director being one of its member, which recommended their regularization pursuant to which the appointment

order was issued, appointing them for a period of two years on probation. It is not that the Petitioners have been appointed as fresh candidates but they have earned the appointment orders in the wake of the compliance of the necessary stipulations as their names were included by the Departmental/Selection Committee and it was in consonance with the policy of the State Government in granting regularization on completion of continuous five years service.

It is after the DPC was conducted, the Petitioners emerged as the candidates to fulfill the said criteria and therefore appointment orders were issued in their favour by the Municipal Council, but only on the pretext that there were no advertisements, had been stayed by the Director of Municipal Administration.

15. Much emphasis have been laid down by the learned Advocate General upon the decision in the case of **Uma Devi** (supra). But, our attention is invited by the learned Counsel for the Petitioner to the case of **Jaggo vs. Union of India & Ors.**² when the Apex Court was dealing with the applicants who were engaged by the Central Water Commission (CWC) on part time/adhoc terms as Safaiwalis, appointed for cleaning and maintaining the office premises sought regularization of their services but the Tribunal as well as the High Court refused to confer the benefit upon them by relying upon the principle laid down in

² 2024 SCC OnLine SC 3826

Umadevi (supra) holding that they cannot claim a vested right to be absorbed or regularized without fulfilling the requisite conditions.

The High Court had held that the Petitioners did not possess the minimum educational qualifications required for regular appointments, and additionally noted that the employer had subsequently outsourced the relevant housekeeping and maintenance activities and hence dismissed the Petition.

On careful consideration of the counter arguments advanced, largely revolving around the decision in case of **Umadevi** (supra), and the contention of the Respondents that the appointments of the appellants was not on regular post as the nature of work performed by them was neither perennial nor fundamental to the functioning of the offices.

In paragraph 20 and 21, of the decision of the Apex Court specifically recorded 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 v. Union of India*⁵, 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 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.”

16. Highlighting the policy of the International Labour Organization (ILO), of which India is a founding member, Their Lordships held that India has consistently advocated for employment stability and the fair treatment of workers and it was a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation.

Recording that the foundational purpose of temporary contracts may have been to address short-term or seasonal needs but they have increasingly become a mechanism to evade long-term obligations, the decision in case of **Umadevi** (supra) was specifically distinguished by observing thus :

“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.”

17. In yet another decision in **Shripal & anr. vs. Nagar Nigam, Ghaziabad**³, the Apex Court observed thus :

“12. The evidence, including documentary material and undisputed facts, reveals that the Appellant Workmen performed duties integral to the Respondent Employer's municipal functions specifically the upkeep of parks, horticultural tasks, and city beautification efforts. Such work is evidently perennial rather than sporadic or project-based. Reliance on a general “ban on fresh recruitment” cannot be used to deny labor protections to long-serving workmen. On the contrary, the acknowledged shortage of

3 2025 SCC OnLine SC 221

Gardeners in the Ghaziabad Nagar Nigam reinforces the notion that these positions are essential and ongoing, not intermittent.

13. By requiring the same tasks (planting, pruning, general upkeep) from the Appellant Workmen as from regular Gardeners but still compensating them inadequately and inconsistently the Respondent Employer has effectively engaged in an unfair labour practice. The principle of “equal pay for equal work,” repeatedly emphasized by this Court, cannot be casually disregarded when workers have served for extended periods in roles resembling those of permanent employees. Long-standing assignments under the Employer's direct supervision belie any notion that these were mere short-term casual engagements.”

18. Relying upon the decision of the Apex Court in the case of **Jaggo** (supra), a Division Bench of this Court in a group of Petitions in the case of **Avinash Seshrao Wankhede & anr. vs. The Nashik Municipal Corporation Rajiv Gandhi Bhavan & anr.**⁴, has extended the benefit to the Daily wage workers of working in various departments of the Nashik Municipal Corporation including contract labours who have been working for more than ten years and directed the proposals to be forwarded to the Government within a period of 45 days and expected the Urban Development Department to follow the judgment laid down in **Jaggo** (supra).

19. As far as the present Petitioners are concerned, it is not in dispute that they have been working for considerable length and time

⁴ Writ Petition No. 11882 of 2018 decided on 12.02.2025

as Daily Wagers and rather are rendering essential services since they have been working as Garbage Collectors and Workers and it is not the case of the employer i.e. Margao Municipal Council that they are not in continuous service. Rather, the Margao Municipal Council has graciously accepted that they have been discharging their duties continuously and, therefore, by following the proper procedure in tune with the policy decision of the State Government of Goa, as contained in its Office Memorandums dated 29.10.1990 and 07.06.2000, it had directed their regularisation after conduct of the DPC in which the Additional Director (Urban Development) himself was a member.

The State Government being unmindful of the fact that there was a settlement arrived as early as on 08.05.2014 under the Industrial Disputes Act, 1947, between the Association and the Municipal Council, pursuant thereto the demands of regularisation of workers who have worked for more than five years, was accepted and given effect to. On one hand the State Government wants the policy to be extended to its own employees so as to prevent their exploitation but before us it is opposing the regularisation of the grass root Level Workers of the Municipal Council, in form of Garbage Collectors and Road Workers on the pretext that the amount due to them under Dearness Allowance is their responsibility.

We should only remind the State Government that the Dearness Allowance becomes payable to its employees as a cost of living

adjustment and by which, each one of the State Government employee is protected, in order to deal with the inflation, we are really surprised to note the vehement opposition of the Government in extending this benefit to the employees of Municipal Council, who is ready to share the burden of their regularisation purely on humanitarian consideration as they have been working continuously with them since considerable length of time, and deserved regularisation in consonance with the policy decision of the State itself.

20. In the wake of the above, since we do not appreciate this stand of the State, by outrightly rejecting the same, the Writ Petition is made absolute by quashing and setting aside the letter dated 23.04.2020 and also the Order dated 10.06.2020 issued by the Respondents.

Upon the order being quashed and set aside, the Petitioners shall be held entitled to be treated as absorbed in their services from the date of their appointment and since they have already discharged their duties on the said post but received the salary as Daily wager, the Municipal Council shall pay the difference in the salary from the date of their joining on the post of Worker in terms of their appointment order i.e. 02.03.2020. From the said date, the Petitioners shall be treated as regular Workers on the establishment of Margao Municipal Council and shall be held for all the benefits accruing to them on the said posts.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.