IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (SS) No. 436 of 2024

Ajay Kumar and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

With

Writ Petition (SS) No. 2263 of 2023

Sanjay Kumar and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 2271 of 2023

Shyam Prakash and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 412 of 2024

Guddu and Others ...Petitioners

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 413 of 2024

Asha Rani Awasthi ...Petitioner

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 414 of 2024

Ganga Ram and Others ...Petitioners

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 416 of 2024

Shishupal ...Petitioner

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 420 of 2024

Manoj Kumar ...Petitioner

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 437 of 2024

Liladhar Bhatt and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 438 of 2024

Anil Kannojia and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 439 of 2024

Manoj Kumar ...Petitioner

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 440 of 2024

Bhawani Datt Paneru ...Petitioner

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 441 of 2024

Dharamveer Singh and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 442 of 2024

Jageshwar and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 444 of 2024

Dayal Singh Bisht ...Petitioner

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 447 of 2024

Manoj Joshi and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 448 of 2024

Ram Karan and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 451 of 2024

Ram Ji Shah and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 455 of 2024

Rakesh and Others ...Petitioners

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 554 of 2024

Chhatrapal and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 593 of 2024

Champa Prakash ...Petitioner

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 594 of 2024

Mukesh Srivastava ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 637 of 2024

Mumtaj Ansari and Others ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 945 of 2024

Manjoor Ali ...Petitioner

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 1097 of 2024

Anil Kumar Yadav and Another ...Petitioners

Vs.

State of Uttarakhand and Others ...Respondents

With

Writ Petition (SS) No. 1120 of 2024

Satyendra Mishra and Another ...Petitioners

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 1129 of 2024

Mahesh Chandra Pandey and Others ...Petitioners

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 1332 of 2024

Uma Bhandari ...Petitioner

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 1606 of 2024

Bhupendra Kumar and Others ...Petitioners

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

Writ Petition (SS) No. 1613 of 2024

Nand Kumar and Others ...Petitioners

Vs.

Vice Chancellor and Others

...Respondents

With

Writ Petition (SS) No. 1738 of 2024

Amar Singh ...Petitioner

Vs.

Vice Chancellor Govind Ballabh Pant University of Agriculture and Technology and Others

...Respondents

With

Writ Petition (SS) No. 2446 of 2024

Chandra Shekhar ...Petitioner

Vs.

State of Uttarakhand and Others ...Respondents

Presence:

1. Mr. Sanjay Bhatt, learned counsel for the petitioners.
2. Mr. Harendra Belwal, learned counsel for the petitioners in the connected writ petition.
3. Mr. Pradeep Hairiya, learned Standing Counsel for the State.
4. Mr. Rajendra Dobhal, learned senior counsel assisted by Mr. Shubhang Dobhal, learned counsel for the respondent.
5. Mr. Satyendra Lingwal, learned counsel for the University in WPSS No. 2446 of 2024.

Hon'ble Rakesh Thapliyal, J. (Oral)

In all these writ petitions the issue as raised are common. The grievance of the petitioners of all these bunch of petitions the petitioners are working since last more than two decades in the respondent-University, but their services have not been regularized.

2. It is submitted that earlier these petitioners approached to this court by way of bunch of writ petitions and all these petitions were decided by the Coordinate Bench of this court on 28.12.2023 and 08.011.2023. The respondent-University

argued in the earlier round of litigation that these petitioners are not in direct employment of the University and they have been engaged through a contractor and there is no direct relationship of master and servant between these petitioners and the University.

3. In response to this argument, one of the letter issued by the Principal and Head of the University of Animal Anatomy dated 09.01.2016 were placed in the earlier round of litigation, wherein, it was mentioned that the petitioners were engaged as a daily wager in the University w.e.f. 01.10.2001.

4. After taking into consideration the argument as advanced by the learned counsel for the petitioners and the learned counsel for the University the Coordinate Bench of this court on 08.11.2023 passed the following orderdirections to the University:

> "5. Learned counsel for the petitioner has drawn attention of this Court to a letter issued by Principal and Head of Department, Animal Anatomy, on 09.01.2016, which supports the stand taken by petitioner that he was engaged as daily wage employee in the University w.e.f. 01.10.2001 and further that his work & conduct was found to be satisfactory all through this period.
>
> 6. Learned counsels for the University, however, submit that petitioner was engaged through contractor and there was no direct relationship of master and servant between petitioner and the University. They further point out that since 01.05.2003, University is engaging casual workers only through contractor/outsourcing.
>
> 7. Be that as it may, since petitioners have rendered continuous satisfactory service for more than two decades in the University, which is 'State' within meaning of the term under Article 12 of the Constitution, the writ petitions are disposed of with direction to Competent Authority in the University to constitute a Selection Committee in terms of the Rules applicable for regularization of University employees. The Committee, so constituted, shall examine claim of all the petitioners for regularization and pass appropriate orders, as per law, within three months from the date of its constitution. The Selection Committee shall bear in mind the law declared by Division Bench of this Court in Special Appeal No. 300 of 2018 "Ganga Datt Sharma vs. G.B. Pant University of

Agriculture and Technology, Pantnagar & others" decided on 21.08.2018, as affirmed by Hon'ble Supreme Court in SLP No. 266 of 2020."

5. Now, in compliance to the order passed by this court dated 08.11.2023 by cyclostyle orders, which are impugned in these petitions the claim of each of the petitioners has been rejected and while rejecting their claim for regularization the Joint Director observed in the order impugned dated 17.02.2024 that the petitioners were engaged through the contractor in the University as per Government Order 01.05.2003 a policy has been adopted to engage the employee through outsource.

6. It is also further observed in the order imgpuned that there is no any relationship of master and servant in between the petitioners and the University and therefore the petitioners' claim for regularization does not fall within the purview of Regularization Rules of 2013. A further reference has been made in the order impugned that by Government order dated 01.01.2019 the Regularization Rules of 2013 has been stayed. As it appears from the impugned orders passed by the University in respect of each of the petitioners no individual case has been considered independently and in fact by a common order the claim of each of the petitioners has been rejected.

7. Mr. Rajendra Dobhal, learned senior counsel argued that since the posts are not sanctioned and until and unless the State Government sanctioned the posts, these petitioners cannot be regularized; however, not a single document has been placed before this court, whereby, the University at any point of time requests to the Government for sanction of the post. This is also undisputed fact that the judgment passed by the Coordinate Bench dated 08.11.2023 was never been challenged by the University and as on today that attains finality.

8. As it appears from the judgment passed by the Coordinate Bench the University was directed to constitute the selection committee in terms of the Regularization Rules and with the further direction that the Committee so constituted shall examine the claim of regularization of each of the petitioners but as it appears from the order impugned the claim of each of the petitioners have not been considered independently, therefore, it appears that in fact the directions issued by this court dated 08.11.2023 in bunch of petitions has not been strictly complied with.

9. Apart from this, the argument as advanced by the University in the previous round of litigation that there was no direct relationship of master and servant between the petitioners and the University has already been turned down by the Coordinate Bench. It appears from the order impugned, which are cyclostyle in nature on the same reasoning, which was rejected by this court the claim of the petitioner has been rejected. As observed earlier since the judgment passed by the Coordinate Bench has not been challenged and that attains finality, therefore, while rejecting the claim of the petitioner the respondent cannot take plea that there was no relationship of master and servant between the petitioner and the University, which itself reveals that the claim of the petitioners have not been considered strictly in the light of the direction issued by the Coordinate Bench of this court.

10. Mr. Sanjay Bhatt, learned counsel for the petitioners also informed to this court that so far as the Regularization Rules is concerned, which was earlier stayed by the High Court is no more in operation since the writ petition in which the Regularization Rules of 2013 were under challenge subsequently decided on 22.02.2024 in bunch of petitions, the leading one is

WPSB No. 616 of 2018, whereby, the Division Bench of this court make certain modification in the Regularization Rules.

11. Learned counsel for the petitioners also placed reliance on the judgment passed by the Hon'ble Apex Court in **Jaggo vs. Union of India and Others** decided on 20.12.2024 SCC Online SC 3826. The various arguments have been advanced in this case and the summary of the arguments as advanced on behalf of the employees has been elaborated in paragraph-8 of the judgment, which are being reproduced hereinasunder:

> "8. On behalf of the appellants, the following arguments have been advanced before us:
>
> **(i). Continuous and Substantive Engagement:** The appellants emphasize their long, uninterrupted service spanning well over a decade-and in some instances, exceeding two decades. They argue that their duties were neither sporadic nor project-based but permanent and integral to the daily functioning of the respondent's offices.
>
> **(ii). Nature of Duties:** Their responsibilities- such as cleaning, dusting, gardening, and other maintenance tasks-were not casual or peripheral. Instead, they were central to ensuring a clean, orderly, and functional work environment, effectively aligning with roles typically associated with regular posts.
>
> **(iii). Absence of Performance Issues:** Throughout their tenure, the appellants were never issued any warning or adverse remarks. They highlight that their work was consistently satisfactory, and there was no indication from the respondents that their performance was not satisfactory or required improvement.
>
> **(iv). Compliance with 'Uma Devi' Guidelines:** The appellants assert that their appointments were not "illegal" but at most "irregular." Drawing on the principles laid down in Secretary, State of Karnataka vs. Uma Devi4, they submit that long-serving employees in irregular appointments-who fulfil essential, sanctioned functions-are entitled to consideration for regularization.
>
> **(v). Discrimination in Regularization:** The appellants point out that individuals with fewer years of service or similar engagements have been regularized. They contend that denying them the same benefit, despite their longer service

and crucial role, constitutes arbitrary and discriminatory treatment.

(vi). Irrelevance of Educational Qualifications: The appellants reject the respondents' reliance on formal educational requirements, noting that such criteria were never enforced earlier and that the nature of their work does not inherently demand formal schooling. They argue that retrospectively imposing such qualifications is unjustified given their proven capability over many years.

(vii). Equity and Fairness: Ultimately, the appellants submit that the High Court erred by focusing too rigidly on their initial terms of engagement and ignoring the substantive reality of their long, integral service. They maintain that fairness, equity, and established judicial principles call for their regularization rather than abrupt termination."

12. In paragraph-9 of the judgment the arguments as advanced by the employer were also elaborated, which are also being reproduced hereinasunder:

"9. On the other hand, the following primary arguments have been advanced before us on behalf of the Respondents:

(i). Nature of Engagement: The respondents maintain that the appellants were engaged purely on a part-time, contractual basis, limited to a few hours a day, and that their work was never intended to be permanent or full-time.

(ii). Absence of Sanctioned Posts: They assert that the appellants were not appointed against any sanctioned posts. According to the respondents, without sanctioned vacancies, there can be no question of regularization or absorption into the permanent workforce.

(iii). Non-Compliance with 'Uma Devi' Criteria: Relying heavily on Secretary, State of Karnataka vs. Uma Devi (supra), the respondents argue that the appellants do not meet the conditions necessary for regularization. They emphasize that merely serving a long period on a part-time or ad-hoc basis does not create a right to be regularized.

(iv). Educational Qualifications: The respondents contend that even if the appellants were to be considered for regular appointments, they do not possess the minimum educational qualifications mandated for regular recruitment. This, in their view, disqualifies the appellants from being absorbed into regular service.

(v). Outsourcing as a Legitimate Policy Decision: The respondents point out that they have chosen to outsource the relevant housekeeping and maintenance work to a private

agency. This, they argue, is a legitimate administrative policy decision aimed at improving efficiency and cannot be interfered with by the courts.

(vi). No Fundamental Right to Regularization: Finally, the respondents underscore that no employee, merely by virtue of long-standing temporary or parttime engagement, acquires a vested right to be regularized. They maintain that the appellants' claims are devoid of any legal entitlement and that the High Court was correct in dismissing their petition."

13. In paragraph-10 the arguments advanced by the employee and the employer were discussed and the final conclusion has been drawn in paragraph 27 and 28, which reads as under:

"10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

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.

28. In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:

i. The termination orders dated 27.10.2018 are quashed;

ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for

> the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits."

14. Mr. Sanjay Bhatt, learned counsel for the petitioner by referring the judgment submits that in view of the judgment passed by the Hon'ble Apex Court these petitions cannot be denied regularization. Since the Coordinate Bench already directed to the respondent-University to constitute the Committee as per Rules for considering claim of the petitioners for their regularization but in fact while deciding the claim of the petitioners the respondents rejected their claim on the ground which in fact was turned down by the Coordinate Bench.

15. Accordingly, all the writ petitions are disposed of finally and the respondent-University is directed to consider the claim of each of the petitioner independently by constituting the Committee as directed by the Coordinate Bench in its judgment dated 28.12.2023 and 08.11.2023 as per the Regularization Rules afresh within ten weeks from the date of production of certified copy of this order and if the University feels some difficulty due to lack of vacancies the University is free to send the proposal to the Government for creation of supernumerary post. Since the State Government is also the party respondent here, therefore, the State Government is also simultaneously directed that if they receive any such proposal from the University for sanction of posts they the State Government shall consider it to create and sanction supernumerary post keeping in view of the fact that these petitioners are working since last more than two decades in the University.

16. Subject to the directions and observations as above, all the impugned orders are quashed.

17. It is also made clear that the Committee so constituted by the University as per the direction by the Coordinate Bench may also consider the judgment rendered by the Hon'ble Apex Court in the case of **Jaggo vs. Union of India and Others.**

18. The issue of claim for equal pay for equal work cannot be decided at this stage since the claim of the petitioner for regularization were not considered by the University as per the direction issued by the Coordinate Bench and it is open for the petitioners to raise that issue at an appropriate stage.

(Rakesh Thapliyal, J.)
06.01.2025

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