



2025:DHC:1533-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 988/2019**

**MEENA**

.....Petitioner

Through: Mr. Shankar Raju and Mr.  
Nilansh Gaur, Advs.

versus

**UNION OF INDIA & ORS**

.....Respondents

Through: Ms. Nidhi Raman, CGSC with  
Mr. Zubin Singh, Adv for R-1 and R-2.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

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**03.02.2025**

**C. HARI SHANKAR, J.**

1. The petitioner instituted OA 358/2017 before the Central Administrative Tribunal<sup>1</sup>, seeking posthumous regularization of her husband Sanjeev Kumar with effect from 11 December 2006 or, in the alternative, 15 March 2011, and for consequential release, to her, of family pension, Death Cum Retirement Gratuity<sup>2</sup> and other retiral benefits, consequent on the death of her husband.

2. *Vide* judgement dated 20 February 2018, the Tribunal has dismissed OA 358/2017. Aggrieved thereby, the petitioner has approached this Court.

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the Tribunal" hereinafter

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Case set up in the OA

3. The case set up by the petitioner in her OA was this.
4. Sanjeev Kumar was engaged by the respondents as Casual Labour in the Kalawati Saran Children's Hospital<sup>3</sup> with effect from 8 December 1995, and was accorded temporary status with effect from 1 August 2000. He died, without being regularized, on 27 February 2016. Thereafter, the petitioner applied, on 5 April 2016, 26 April 2016 and 9 September 2016, for being disbursed family pension, DCRG and other retiral benefits due to Sanjeev Kumar, and also sought appointment on compassionate grounds. No response was received.
5. The petitioner was verbally informed that, as Sanjeev Kumar was not a regular employee of the respondents, he was not entitled to any retiral benefits. She, thereupon, addressed two more representations to the respondents on 10 November 2016 and 7 January 2017, but received no response.
6. The petitioner, thereupon, petitioned the Tribunal by way of OA 358/2017, contending, *inter alia*, as under:
- (i) Sanjeev Kumar had been appointed after his name was sponsored by the Employment Exchange and he was interviewed. His name at S. No. 70 in the panel of successful



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interviewees. His appointment was against a regularly sanctioned post. In the list of employees to be conferred temporary status, dated 4 August 2000, his name was at S. No. 47.

(ii) The respondents had, *vide* order dated 21 March 2011, regularized four other casual labour employees, appointed with Sanjeev Kumar and later conferred temporary status.

(iii) Posthumous regularization to casual labour was also accorded by the respondents, in three cases, *vide* order dated 11 February 2013, so as to ensure grant of pensionary benefits to their legal heirs. They had rendered only 6 to 10 years of service, whereas Sanjeev Kumar had served the respondents for more than 20 years. Similar posthumous regularization had been granted to five other casually appointed employees *vide* order dated 23 February 2012.

(iv) Even applying the judgement of the Supreme Court in *State of Karnataka v Uma Devi*<sup>4</sup>, therefore, the petitioner was entitled to be regularized, as he had rendered service, after being appointed as casual labour, for over 10 years.

Predicated on these contentions, the petitioner prayed that the services of Sanjeev Kumar be posthumously regularized with effect either from 11 February 2006 or at least from 15 March 2011, and that she be disbursed the retiral benefits due to Sanjeev Kumar, including family pension, DCRG, and the like.

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### Stand of respondents in counter-affidavit before the Tribunal

7. The respondents, in their counter-affidavit before the Tribunal, sought to contend that casual employees, post grant of temporary status, were entitled to benefits as per Office Memorandum<sup>5</sup> dated 18 October 2007 issued by the Department of Personnel & Training<sup>6</sup>, which did not include regularization. Equally, an employee conferred temporary status was not entitled to DCRG, and his legal representatives, post his demise, would also not be entitled to family pension, as per the extant instructions. Leave encashment, due to Sanjeev Kumar on the date of his death, had been paid to the petitioner.

8. Regularization of some temporary employees in the KSCH, it was submitted, had been as per the final Seniority List of employees of the KSCH, issued on 5 August 2008. Regularization was being granted as per availability of vacancies, on 2:1 ratio. It was further averred that the KSCH had sent, to the Directorate General of Health Services<sup>7</sup>, a proposal to regularize all temporary status employees working with it, on 21 March 2017, but that the proposal was still under consideration.

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<sup>4</sup> (2006) 4 SCC 1

<sup>5</sup> "OM" hereinafter

<sup>6</sup> "DOPT" hereinafter

"DGHS" hereinafter



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9. In these circumstances, the respondents submitted, in the counter-affidavit before the Tribunal, that the OA filed by the petitioner was devoid of merit.

The impugned Judgement

10. The Tribunal has, by the impugned judgment dated 20 February 2018, dismissed OA 358/2017.

11. The reasoning of the Tribunal is contained in the following paragraphs:

“11. On a perusal of the records, it is found that the list of Casual Labourers/Daily Wagers contained in the office order dated 4.8.2000 (Annexure A/5), which has been referred to by the applicant in her representation dated 10.11.2016(Annexure A/1), is not the seniority list of Casual Labourers/Daily Wagers prepared by respondent no.4. By the office order dated 23.2.2012 (Annexure A/4) and office order dated 11.2.2013(Annexure A/5), to which the attention of the Tribunal has been drawn by Mr. Yogesh Sharma, learned counsel appearing for the applicant, regular Group 'D' employees named therein have been confirmed on the posts held by them with effect from different dates when they were in service, but were dead by the date(s) of issue of those office orders. The office order dated 21.3.2011 (Annexure A/3), by which the services of S/Shri Anand Ballabh Bhardwaj and Mahesh Chand Gaur were regularized with effect from 15.3.2011, were senior to the applicant's husband as per the Final Seniority List of Casual Labourers with Temporary Status as on 1.6.2088, circulated on 5.8.2008, wherein the name of Shri Mahesh Chand Gaur appeared at sl.no.11 and the name of Shri Anand Ballabh Bhardwaj appeared at sl.no.14, whereas the name of the applicant's husband Shri Sanjeev appeared at sl.no.25. The services of S/Shri Anand Ballabh Bhardwaj and Mahesh Chand Gaur were regularized by respondent no.4 solely on the basis of the said Final Seniority List dated 5.8.2008. During his life time, the applicant's husband did not question either the said Final Seniority list dated 5.8.2008 or the office order dated 21.3.2011 (ibid), by making any representation to the departmental authorities and/or by approaching any judicial forum. At this belated stage, the applicant cannot be allowed to

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question the said Seniority List dated 5.8.2008. The list of Casual Labourers with Temporary Status (Annexure I to the letter dated 19.2.2008), to which the attention of the Tribunal has been drawn by Mr. Yogesh Sharma, learned counsel appearing for the applicant, was not the seniority list of Casual Labourers with Temporary Status, and at any event, the same stood superseded by the Final Seniority List dated 5.8.2008. The services of Casual Labourers with Temporary Status are regularized by the employer on the basis of the Seniority List as and when vacancies in Group 'D' post become available and at the prescribed ratio, and in the absence of vacancy in Group 'D' post in regular establishment, the services of none of the Casual Labourers with Temporary Status can be regularized as per the instructions issued by the Government of India. There are about ten Casual Labourers with Temporary Status who are senior to the applicant's husband, and there are about 10 Casual Labourers with Temporary Status who are junior to the applicant's husband as per the Seniority List dated 5.8.2008. The applicant has not produced before this Tribunal any material showing regularization of services of any of the juniors of her husband (as per the Seniority List dated 5.8.2008). In the above view of the matter, I have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed.

12. The decisions relied on by Mr. Yogesh Sharma, learned counsel appearing for the applicant, being distinguishable on facts, do not support the claim of the applicant.”

12. The petitioner thereafter filed RA 91/2018 before the Tribunal, seeking review of impugned order dated 20 February 2018.

13. By order dated 14 December 2018, the Tribunal dismissed RA 91/2018.

14. Thus, it is apparent that the Tribunal has proceeded to reject the petitioner's claim essentially on two grounds; the first being that the casual employees with temporary status, who had been regularised, were senior to Sanjeev Kumar in the seniority list dated 5 August 2009, which was not under challenge and, secondly that the pensionary benefits, to which the petitioner laid claim, were available



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only to regularised employees, and not to employees who were holding temporary status.

**15.** Aggrieved by the aforesaid judgment of the Tribunal, the applicant before the Tribunal, has approached this Court by means of the present writ petition.

Proceedings before this Court.

**16.** The present writ petition came up for preliminary hearing before this Court on 30 January 2019. On that date, the Court noted that seven senior officers of the KSCH, in a meeting held on 21 March 2017, chaired by Additional Medical Superintendent, had recommended regularisation of all temporary status employees of the KSCH, including posthumous regularisation of four employees, of which one was Sanjeev Kumar. The respondents were, therefore, directed to state, in their reply, the status of the said recommendation.

**17.** On 15 January 2020, a short affidavit was filed by KSCH in the present writ petition. Paras 3 to 5 of the said affidavit read thus:

“3. That I state that vide Order dated 30.1.2019, this Hon'ble Court directed the Respondents to file their replies specifically stating the status of the said recommendation and whether the services of the Petitioner's deceased husband would also be regularized on the basis of said recommendation. In response to the notice issued by this Hon'ble Court, it is submitted that a proposal for reconsideration of regularization of deceased temporary status casual labour employees had already been forwarded by Respondent nos. 3 and 4 to Respondent Nos. 1 and 2. In response thereto, Respondent no.2 vide letter dated 11.12.2019 conveyed its opinion as regards the proposal of Respondent nos. 3 and 4 with

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respect to posthumous regularization of deceased casual labour employees, wherein it was stated as under:

“.....M/o H&FW has examined the proposal in consultation with Deptt. of Personnel & Training and conveyed that LHMC may form merit list for each year in which CL-TS employees expired. Thereafter, as per the vacancies available at that time and provisions of Scheme of 1993, the expired CL-TS employees may be considered for regularization and accordingly the. retirement/death benefits may be calculated by LHMC at their level alongwith the currently working 23 CL-TS. If approval of dte. GHSIMoH&FW is required, they may send the proposal accordingly ...

The Respondent Nos.3 and 4 were thus directed to provide merit list for each year in which CL-TS employees expired and such employees were to be considered for regularization according to the vacancies available at that time. A copy of letter dated 11.12.2019 by Respondent No.2 to Respondent Nos.3 and 4 alongwith enclosures is annexed hereto and marked as Annexure "R-1 (Colly)".

4. That I state that in response thereto, Respondent Nos.3 and 4, vide letter dated 7.1.2020, furnished the requisite information alongwith an eligibility list of 28 CL-TS inclusive of 23 currently working CL-TS and 5 deceased CL-TS as per year-wise vacancies in Respondent no. 4 Hospital to Respondent no.2. it may be mentioned here that the name of petitioner's deceased husband late Sh. Sanjeev Kumar has been included under the names of five deceased temporary status employees. A copy of letter dated 7.1.2020 by Respondent No.4 to Respondent No.2 alongwith enclosures is annexed hereto and marked as Annexure "R-2 (Colly.)".

5. That I state that the above list is still under consideration as per extant Government rules at the level of Respondent No.1 and a decision on the same is awaited. The Respondents further crave leave of this Hon'ble Court to file such additional affidavit as may be directed by this Hon'ble Court in further course of proceedings in the present petition.”

**18.** A further affidavit dated 26 April 2022 was filed by KSCH, paras 2 to 4 of which read thus:

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“2. That the present short affidavit is being filed in compliance of the order dated 21.12.2020 of this Hon'ble Court whereby the Respondents had been directed to file an additional affidavit regarding the subsequent events that have taken place during the pendency of the present proceedings.

3. It is submitted that the answering respondents in line with DOPT OM No. 51016/2/1990-Estt dated 10.09.1993 have taken a decision that regularization of alive employees may be done from the date of approval and not from a retrospective date. Accordingly, only 23 Casual Laborers with Temporary Status (CL-TS) Employees, who were alive, were regularized in terms of the DOPT OM dated 10.09.1993 with immediate effect (not retrospectively) vide the Ministry's letter dated 08.06.2020. A letter dated 23.06.2020 was also sent by the Respondent Nos. 1 and 2 to the Lady Hardinge Medical College & Associated Hospitals in this regard. Copy of the letter dated 08.06.2020 along with the list of 23 CL-TS employees is annexed here with as Annexure R/1 (Colly). Copy of letter dated 23.06.2020 is annexed herewith as Annexure R/2

4. It is further submitted that a similar proposal for regularization of few CL-TS employees in Lady Hardinge Medical College (LHMC) had been examined by the Respondent Nos 1 and 2 in consultation with the DoPT and only 40 CL-TS employees, who were alive, were regularized with immediate effect vide letter dated 18.10.2020. Copy of the letter dated 18.10.2020 is annexed herewith as Annexure R3.”

**19.** This was followed by yet another affidavit dated 1 August 2024, from the KSCH, paras 2 to 6 of which read thus:

“2. That the present additional affidavit is being filed in compliance of order dated 22.05.2024 wherein the Hon'ble Court had directed as under:

“3. Learned counsel for the respondents prays for and is granted four weeks' time to file an affidavit clearly stating as to whether vacancies were available at any time before the death of the petitioner's husband for regularizing persons holding temporary status.

3. It is submitted that no policy for regularisation of Temporary status workers was in existence during the tenure/ lifetime of the petitioner's husband. However, the policy along with detailed instructions was issued by the Nodal Ministry i.e. Ministry

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of Health and Family Welfare in June, 2020 for regularisation of all 23 Live Casual Laborers with Temporary Status (CL-TS) workers at that time. No CL-TS worker was regularised with retrospective effect and the 23 CL-TS workers as mentioned above were regularised w.e.f 08.06.2020. It is further submitted that the same cannot be termed as "Promotion".

4. It is submitted that since the husband of the Petitioner had already expired in 2016 before the policy instructions of the Ministry dated 08.06.2020 came into place, hence he could not be covered under the instructions of the Ministry dated 08.06.2020. That five already expired CL-TS workers, who were not alive on the date of approval i.e. 08.06.2020 granted by MoH & FW vide its letter No.A 12034/27/2017-ME dated 08.06.2020 were not regularised.

5. It is further submitted that there are no FRs/OM/Rules available as on date, which make the petitioner entitled for family pension.

6. In view of the aforesaid facts and circumstances, it is most respectfully submitted that the present writ petition being devoid of any merits is liable to be dismissed."

**20.** We have heard Mr. Shankar Raju, learned Counsel for the petitioner and Ms. Nidhi Raman, learned CGSC for the respondents, at length who have reiterated their respective stand before the Tribunal.

### **Analysis**

**21.** Having heard learned Counsel, we find ourselves unable to sustain the impugned judgment of the Tribunal.

**22.** The husband of the petitioner had worked with the respondent for 21 years as casual labour, prior to his unfortunate demise on 27



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March 2016. The plea before the Tribunal was for posthumous regularization.

**23.** The issue, so far as the right of casual labour for regularisation stands now settled by the judgment of the Supreme Court in *Jaggo v UOI*<sup>8</sup>. The entire law regarding the right of persons initially appointed on casual/contract/*ad hoc* basis, who had continued for long periods of time, to regularisation, stands discussed, revisited and settled by the Supreme Court in *Jaggo*<sup>9</sup>.

**24.** The appellants before the Supreme Court had been engaged as *safaiwalas/khalasis*, engaged in cleaning and maintenance office premises, on part time *ad hoc* terms, on various dates between 1993 and 2004. They approached the Tribunal by way of OA 2211/2015 seeking regularisation of their services. They contended that, over the years, their roles and responsibilities could no longer be treated as “part time” or “contractual” and that they were performing ongoing and core functions integral to the Central Warehousing Corporation<sup>10</sup>, where they had been engaged. They further submitted that their original appointments were neither illegal nor clandestine and, that therefore, they were entitled to regularisation.

**25.** The Tribunal dismissed the plea of Jaggo etc., on the ground that they were not engaged against regular vacancies and were not providing sufficient full time service, which would meet the requirement of 240 days’ continuous service in a year.

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<sup>8</sup> 2024 SCC OnLine SC 3826  
“Jaggo etc” hereinafter



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26. Aggrieved by the judgment of the Tribunal, Jaggo etc. approached this Court by way of WP (C) 6822/2018.

27. This Court held that Jaggo etc. were part time workers, not appointed against sanctioned posts, without sufficient duration of full time service as would justify their regularisation. In rejecting the claim of Jaggo etc., this Court relied on the judgment of the Supreme Court in *State of Karnataka v Uma Devi*<sup>11</sup>. It was also observed that Jaggo etc. did not possess the minimum educational qualifications required for regular appointments and that the CWC had subsequently outsourced the housekeeping and maintenance activities in which Jaggo etc. were employed. Thus, this Court concluded that no legal basis, to grant the reliefs sought by the Jaggo etc., could be said to exist.

28. Aggrieved thereby, Jaggo etc. approached the Supreme Court.

29. The Supreme Court has, in paras 8 and 9 of its judgment, enumerated the rival submissions of Jaggo etc. and of the respondents before it, thus:

“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 v. Uma Devi*, 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



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 v. 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 part-time 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.”

30. Thereafter, the Supreme Court has proceeded to discuss, in detail, the law on the subject, thus:



“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.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas—a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings

12. Despite being labelled as “part-time workers,” the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

14. The abrupt termination of the appellants' services, following dismissal of their Original Application before the



Tribunal, was arbitrary and devoid of any justification. The termination letters, issued without prior notice or explanation, violated fundamental principles of natural justice. It is a settled principle of law that even contractual employees are entitled to a fair hearing before any adverse action is taken against them, particularly when their service records are unblemished. In this case, the appellants were given no opportunity to be heard, nor were they provided any reasons for their dismissal, which followed nearly two decades of dedicated service.

15. Furthermore, the respondents' conduct in issuing tenders for outsourcing the same tasks during the pendency of judicial proceedings, despite a stay order from the Tribunal directing maintenance of status quo, reveals lack of bona fide intentions. Such actions not only contravened judicial directives but also underscored the respondents' unwillingness to acknowledge the appellants' rightful claims to regularization.

16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

17. As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed—cleaning, sweeping, dusting, and gardening—does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades. Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

18. The appellants have also established that individuals with lesser tenure or comparable roles were regularized by the respondents. The counsel for the appellants had submitted a seniority list for employees working as the Multi-Tasking Staff published by the Respondent Department on 04.03.2024 wherein the following employees were a part of the staff without the required educational qualification:



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| S. No. | Name                                 | Educational Qualification | Category   | Date of Continuous CWC Service | Temporary or Permanent posts |
|--------|--------------------------------------|---------------------------|------------|--------------------------------|------------------------------|
| 1.     | Krishna s/o Lt. Khajan Singh         | Illiterate                | 26.07.1988 | Permanent                      | SC                           |
| 2.     | Naresh Devi w/o Lt. Surendra Kumar   | Illiterate                | 29.10.1991 | Permanent                      | Gen                          |
| 3.     | Shiv Kumar s/o Lt. Pratap Singh      | Illiterate                | 08.09.1994 | Permanent                      | SC                           |
| 4.     | Radhe Shyam s/o Lt. Sadhu Ram Maurya | Illiterate                | 30.05.2012 | Permanent                      | OBC                          |
| 5.     | Raju s/o Shri Banshi Lal             | Illiterate                | 12.07.1994 | Permanent                      | SC                           |
| 6.     | Shahjad Ali s/o Naushad Ali          | Illiterate                | 01.07.2010 | Permanent                      | Gen                          |
| 7.     | Punam w/o Lt. Raj Kumar              | Illiterate                | 21.09.2015 | Permanent                      | SC                           |
| 8.     | Nirmala w/o Lt. Raju                 | Illiterate                | 02.02.2022 | Temporary                      | SC                           |

A bare perusal of the aforementioned list shows the preferential treatment accorded to these individuals, despite their shorter service durations and no educational qualification. This exemplifies discriminatory behaviour and lack of uniformity in the respondent department's approach. Such disparity violates the principles of equality enshrined in Articles 14 and 16 of the Constitution of India and cannot be sustained in law.

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

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

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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**<sup>12</sup>, 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<sup>6</sup> 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*<sup>13</sup> 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.”

**31.** From the aforesaid paragraphs in *Jaggo*, the following propositions emerge:

(i) Long and uninterrupted service of persons who are initially appointed on part time or contractual basis could not be brushed aside merely by labelling their appointment as part time or contractual. The essence of their employment had to be considered in the light of their sustained contribution, integral nature of their work and the absence of any evidence to indicate



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that their entry into service was through any illegal or surreptitious route.

(ii) The right of such persons to regularisation was augmented in a situation in which they were engaged in performing essential duties, indispensable to the day-to-day functioning of the office.

(iii) The indispensable nature of the work undertaking by such employees was underscored by the fact that

- (a) they had been discharging the said duties on daily and continuous basis for extensive periods,
- (b) their engagement was not sporadic or temporary, but was recurrent, regular and akin to responsibilities typically associated with sanctioned posts and
- (c) the respondent had not engaged other personal to discharge these tasks, during the period of employment of the appellants i.e. Jaggo etc. before the Tribunal.

(iv) The respondent could not seek to contend that the posts were not regular, given the nature of work performed by the employees, which was perennial and fundamental to the functioning of the office. In such a situation, the recurring nature of the duties discharged by the employees necessitated their classification as regular posts, irrespective of how their initial engagement was labelled.



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(v) The subsequent outsourcing of the same task to private agencies demonstrated the inherent need for the services provided by them. This act of outsourcing further underscored the position that the work in question was neither temporary nor occasional.

(vi) Even contractual employees were entitled to fair hearing before adverse action was taken against them. Ergo, the termination of Jaggo etc., without any opportunity to be heard and with no reasons provided for their dismissal, following nearly two decades of dedicated services, could not sustain.

(vii) The consistently satisfactory performance of such employees, over long tenures, further solidified their claim for regularisation. There was no complaint, at any point of time, regarding the competence or performance of duties by the employees. Repeated extension of their services and incremental increase in their remuneration also amounted to implicit acknowledgement of their satisfactory performance.

(viii) The plea that the employees did not possess requisite educational qualification was also not tenable. Duties such as cleaning, sweeping, dusting and gardening did not inherently mandate formal educational pre-requisites. It was unjust to rely on educational criteria, never central to the engagement of the employees for the performance of their duties for decades. The longstanding satisfactory performance of the employees attested to their capability to discharge the function performed by them,



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making rigid insistence on formal educational requirements an unreasonable hurdle.

(ix) *The sustained contribution of such employees over extended periods, coupled with absence of any adverse record, warranted an equitable treatment and regularisation of their services. Denial of the claim to regularisation amounted to manifest injustice and had to be rectified.*

(x) The decision in ***Uma Devi*** did not intend to penalise employees who had rendered long years of service and were undertaking ongoing and necessary functions of the State or its instrumentalities.

(xi) ***Uma Devi*** was intended to prevent back door entry and illegal appointments, which circumvented constitutional requirements. Appointments which were merely irregular, and not illegal, followed by continuous service of the concerned employees against the backdrop of sanctioned functions for a considerable period, gave rise to the need for a fair and humane resolution. *“Prolonged, continuous and unblemished service performing task inherently required on a regular basis, can, over the time, transform what was initially adhoc or temporary into a scenario demanding fair regularisation”.*

(xii) Procedural formalities could not be used to deny regularisation of service to an employee whose appointment was initially termed temporary, but who had performed the



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same duties as performed by regular employees over a considerable period.

(xiii) The initial label of the employees' engagements was irrelevant in such circumstances. *Courts were required, in such cases, to "look beyond the surface label and consider the realities of employees; continuous, long term service, indispensable duties, and absence of any malafide or illegalities in appointments" gave rise to a right to regularisation.*

(xiv) Regularisation could not be refused, in such circumstances, merely because the original terms of employment of the employees did not explicitly provide a right to regularisation.

(xv) Passive misuse of temporary employment contracts reflected a broader systemic issue which affected workers' right of job security. Government institutions bore an even greater responsibility to avoid such exploitive employment practices. Else, it could result in erosion of public trust in governmental operation.

(xvi) While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, such contracts had increasingly become a mechanism to evade long-term obligations. These practices manifested in the several ways bulleted in para 25 of the report, extracted *supra*, which included misuse of temporary labels, arbitrary termination, lack



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of career progression, using outsourcing as a shield and denial of basic rights and liabilities.

(xvii) *Uma Devi* had been weaponized over a period of time. That decision aimed at distinguishing between “illegal” and “irregular” appointments. It categorically required employees in irregular appointments, who were engaged in duly sanctioned posts, and had served continuously for more than 10 years, to be considered for regularisation as a one-time measure. The laudable intent of the judgment was, however, been subverted by institutions who sought to rely on its dicta to reject claims of employees, even where the appointments were not illegal but were merely lacked adherence to procedural formalities.

Thus, in para 27, the Supreme Court concluded that engaging workers on temporary basis for long periods of time, especially where the work undertaken by them was integral to the functioning of the organisation, was unfair, and that government departments were required to lead by example in providing fair and stable employment. *Uma Devi*, benign as conceived, had become an ogress with time. Stability and security in employment is the clearly perceptible undercurrent, flowing beneath the *Jaggo* pronouncement. The judgement clearly castigates the practice of “casual”, “contractual” or “*ad hoc*” employment, continued for long periods of time without any security to the employee, for work integral to the organization, and, thereafter, one argument after another being pressed into service to deny the employees regularization.



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32. Following the aforesaid reasoning, the Supreme Court quashed the orders terminating Jaggo etc. and directed that they be taken back on duty forthwith and their services regularised. They were not, however, held entitled to any back wages, though they were granted continuity of service.

33. In *Shripal v Nagar Nigam*<sup>14</sup>, the Supreme Court has reiterated the aforesaid principles.

34. Applying the principles in *Jaggo* and *Shripal*, it is clear that his long and uninterrupted service for 21 years as a casual *safaiwala ipso facto* entitled the husband of petitioner to regularisation on the said post.

35. Though, Ms. Nidhi Raman, learned CGSC for the UOI, has sought to distinguish the judgment in *Jaggo* on the ground that no juniors of the husband of the petitioner had been regularized, the Supreme Court in *Jaggo* has clearly not held in favour of the workmen solely on the ground that juniors had been regularized. The right to regularisation of Sanjeev Kumar, confirmed by *Jaggo*, flows from the fact that

- (i) the initial appointment of Sanjeev Kumar was neither illegal or irregular, as he had been sponsored by the employment exchange and interviewed before he was appointed,
- (ii) he was appointed against a sanctioned post (though this factor was not essential),



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- (iii) he had worked continuously for 21 years, without break,
- (iv) his record was unblemished and it was not the respondent's case that there was any complaint regarding the discharge of duties by Sanjeev Kumar and
- (v) the nature of work discharged by Sanjeev Kumar was essential to the core functioning of the respondent.

These factors, by themselves, entitled Sanjeev Kumar to regularisation.

**36.** The respondent cannot be heard, therefore, to urge the plea that Sanjeev Kumar had not been regularised, as a defence to the petitioner's case for grant of terminal benefits consequent on his death. If Sanjeev Kumar was not regularised, it was owing to the default of the respondent.

**37.** At the cost of repetition, it was not open to the respondent to extract service of unblemished service of 21 years from Sanjeev Kumar, without regularising him. The petitioner was, therefore, entitled to posthumous regularisation of her husband Sanjeev Kumar and, consequently, to disbursal, to her, of the retiral benefits to which Sanjeev Kumar would have been entitled.

**38.** For the aforesaid reasons, the impugned judgment of the Tribunal is not sustainable in law and is accordingly quashed and set aside.

**39.** The petitioner's prayer for posthumous regularization of her husband would stand allowed with consequential reliefs which may be



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disbursed by the respondent to the petitioner within a period of six weeks from today.

**40.** The petition stands allowed with the aforesaid direction.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**FEBRUARY 3, 2025**

*an/dsn*

*Click here to check corrigendum, if any*

Signature Not Verified

Digitally Signed  
By: AJIT KUMAR W.P.(C) 988/2019  
Signing  
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