



2025:DHC:2591-DB



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

Reserved on : 12 March 2025
Pronounced on : 16 April 2025

+ W.P.(C) 11693/2019, CM APPL. 48068/2019, CM APPL. 3262/2021, CM APPL. 39848/2021 & CM APPL. 44788/2024

DEEN BANDHU GARG AND ORS.Petitioners
Through: Mr. Naresh Kaushik, Sr. Adv.
with Mr. Shantanu Shukla, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND
ORS.Respondents
Through: Ms. Shivangi Kumar, Mr.
Gaurav Kumar Arya and Ms. Ismat
Chughtai, Adv.

+ W.P.(C) 11694/2019 & CM APPL. 48071/2019

RISHI KAPOOR AND ORS.Petitioners
Through: Mr. Naresh Kaushik, Sr. Adv.
with Mr. Shantanu Shukla, Adv.

versus

EAST DELHI MUNICIPAL CORPORATION AND
ORS.Respondents
Through: Ms. Namrata Mukim, Standing
Counsel for MCD with Ms. Niharika Singh,
Adv.

+ W.P.(C) 11695/2019, CM APPL. 48074/2019 & CM APPL. 3416/2021

DINESH AND ANR.Petitioners
Through: Mr. Naresh Kaushik, Sr. Adv.



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with Mr. Shantanu Shukla, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION AND
ORS.

.....Respondents

Through: Ms. Namrata Mukim, Standing
Counsel for MCD with Ms. Niharika Singh,
Adv.

+ W.P.(C) 7915/2023

SURESH CHAND SHARMA

.....Petitioner

Through: Mr. Naresh Kaushik, Sr. Adv.
with Mr. Shantanu Shukla, Adv.

versus

MUNICIPAL CORPORATION OF DELHI AND
ORS.

.....Respondents

Through: Ms. Sriparna Chatterjee,
Standing Counsel with Mr. Ashwin Romy
Chacko and Mr. Manish, Advs.

+ W.P.(C) 8501/2024

MUNICIPAL CORPORATION OF DELHI

.....Petitioner

Through: Ms. Sriparna Chatterjee,
Standing Counsel with Mr. Ashwin Romy
Chacko, Mr. Soumitra Chatterjee and
Mr. Manish, Advs.

versus

ANITA KUMARI AND ANR

....Respondents

Through: Mr. R.V. Sinha, Ms Nidhi
Singh and Ms. Shriya Sharma, Advs. for R-1
Mr. Naresh Kaushik, Sr. Adv. with
Mr. Shantanu Shukla, Adv.



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CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

% **JUDGMENT**
16.04.2025

C. HARI SHANKAR, J.

1. These writ petitions emanate out of five judgments passed by the Principal Bench of the Central Administrative Tribunal¹, of which three have been rendered on 30 September 2019.

2. The specifics may be provided thus:

Writ Petition No.	OA No.	Date of impugned judgment
11693/2019	2482/2019	30 September 2019
11694/2019	2387/2019	30 September 2019
11695/2019	2483/2019	30 September 2019
7915/2023	3540/2019	13 March 2021
8501/2024	2525/2023	4 April 2024

3. WP (C) 11693/2019, WP (C) 11694/2019, WP (C) 11695/2019 and WP (C) 7915/2023 are preferred by the original applicants before the Tribunal, whereas WP (C) 8501/2024 is preferred by the Municipal Corporation of Delhi².

4. The issue in controversy in all these cases is the same. For the sake of convenience, the applicants before the Tribunal in all these

¹ "the Tribunal" hereinafter

² "MCD" hereinafter



cases would collectively be referred to hereinafter as “applicants”.

5. The applicants were all teachers who were appointed by the Municipal Corporation of Delhi/South Delhi Municipal Corporation/East Delhi Municipal Corporation/North Delhi Municipal Corporation on various dates between 2003 and 2008, following advertisements issued by the concerned Municipal Corporations and interview, against sanctioned posts. The appointments were, however, contractual in nature, continued from time to time by granting periodical extensions. All the applicants sought regularisation against the posts occupied by them, albeit on contract basis, and founded their claims on the long and uninterrupted service rendered by them. There is no doubt about the fact that the services rendered by the applicants were satisfactory and there has been no serious complaint against any of them regarding their performance at any point of time.

The impugned orders passed by the Tribunal

Impugned orders in WP (C) 11693/2019, WP (C) 11694/2019 and WP (C) 11695/2019

6. The impugned orders in WP (C) 11693/2019, WP (C) 11694/2019 and WP (C) 11695/2019 were all rendered by the Tribunal on 30 September 2019. The applicants in these OAs had applied to the concerned Municipal Corporations³ seeking absorption/regularisation of their services, pointing out that they had

³ Collectively referred to, hereinafter, as “MCD”, as all Municipal Corporations now stand merged in the MCD



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been appointed against duly sanctioned posts and had been continuing satisfactorily for over 10 years without a break. The MCD, however, submitted, before the Tribunal, that the contractual employment of the applicants had been last extended by a period of one month till 31 October 2019, by order dated 30 September 2019. It was further submitted that, against the posts occupied by the applicants in the said three OAs, offers of appointment had already been issued to regularly selected persons on 17 July 2019, and they were to join on or before 15 October 2019.

7. In these circumstances, the Tribunal disposed of the OAs 2482/2019, 2387/2019 and 2483/2019 by identical orders passed on 30 September 2019, para 4 of which read thus:

“4. In view of the aforesaid, the present OA is disposed of by directing the respondents that, in case, they are in need of services of contractual teachers, the applicants shall not be replaced by new set of contractual teachers and if, after appointing the persons selected on regular basis, there still remain some unfilled vacancies and the respondents are in need of the services of contractual teachers, the applicants shall be given preference, over the juniors and freshers.”

Impugned order dated 13 March 2021 passed in OA 3540/2019

8. Suresh Chand Sharma was the lone applicant in this OA. His claim was identical to the claim of the petitioners in WP (C) 11693/2019, WP (C) 11694/2019 and WP (C) 11695/2019. The Tribunal, accordingly, disposed of OA 3540/2019, by merely following its order dated 30 September 2019 *supra* in OA 2482/2019.



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Impugned order dated 4 April 2024 passed in OA 2525/2023

9. The claim of Anita Kumari, the lone applicant in this OA was identical to the claim of the petitioners in WP (C) 11693/2019, WP (C) 11694/2019 and WP (C) 11695/2019. She, too, sought regularisation as Assistant Teacher (Primary) in the MCD, by dint of her long and uninterrupted service, following contractual appointment against a sanctioned post, after interview. By the time when the matter was decided by the Tribunal, the applicant Anita Kumari had already rendered service for the MCD for over 21 years, having been contractually appointed in 2003.

10. Before the Tribunal, the MCD sought to contend that the appointment of the applicant Anita Kumari was under the Samagra Shiksha Abhiyan⁴, which was a specific scheme under which teachers were appointed on contract for 10 months a year, excluding summer vacations. It was submitted that, owing to financial stringency being faced by the MCD, no further appointments were being made. As against this, the applicant Anita Kumari submitted that her appointment was by the MCD and had continued without interruption since 11 September 2003 against a regular post. It was submitted that the SSA had come into existence only in 2014 and that, therefore, it was erroneous on the part of the MCD to contend that the applicant had been appointed against the SSA. The SSA, it was further submitted, was managed by the MCD and funded from the

⁴ “SSA” hereinafter



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Consolidated Fund of India.

11. Addressing the rival submissions, the Tribunal held that the public notice/advertisement, against which the applicant Anita Kumari had applied and following which she had been interviewed and selected, was issued by the MCD. It made no reference to the appointment being against a particular project or in a particular society. The orders extending the applicant's appointment, too, did not state that it was being done in a society. Clearly, the appointment was by the Education Department of the MCD and had continued since 2003 by repeated orders of extension. The applicant, who was 33 years of age when she was appointed as a Primary Teacher, was 54 years of age by the time the OA was filed before the Tribunal. She had, therefore, in the process, been rendered over-age for appointment to any other government post. She was selected by a transparent, open and fair selection process, as per her merit. Technical/artificial breaks could not be regarded as interrupting the flow of service rendered by the applicant. The appointment of the applicant could not, therefore, be termed as "illegal" within the meaning of the expression as employed by the Constitution Bench of the Supreme Court in its judgment in *State of Karnataka v Uma Devi*⁵. Even if, after a particular point of time, the funds from which the applicant was paid were arranged from the funds allocated to the SSA, that did not detract from the relationship of employer and employee subsisting between the MCD and the applicants. For this finding, the Tribunal relied on the judgment of the Supreme Court in *Nihal Singh v State of Punjab*⁶.

⁵ (2006) 4 SCC 1

⁶ (2013) 14 SCC 65



12. Following these findings, the Tribunal allowed OA 2525/2023 filed by Anita Kumari.

13. It is thus that the dispute has percolated upwards to us.

14. We have heard Mr. Naresh Kaushik, learned Senior Counsel appearing for the petitioners in WP(C) 11693/2019, WP(C) 11694/2019, WP (C) 11695/2019 and WP(C) 7915/2023 and Mr. R.V. Sinha, learned Counsel for the respondent in WP(C) 8501/2024. Ms. Sriparna Chatterjee has represented the MCD in all these petitions.

Rival Contentions and Analysis

15. Two decisions of the Supreme Court essentially form the basis of controversy in the present case; the judgment of the Constitution Bench in *Uma Devi* and the judgment of a two Judge Bench in *Jaggo v UOI*⁷. *Jaggo* has subsequently been followed in *Shripal v Nagar Nigam, Ghaziabad*⁸ to which, too, we would refer at the appropriate stage.

16. *Uma Devi* is a judgment which has often been regarded as an authority for the proposition that continued contractual employment would not assume regular character by distance of time, and the mere fact that the employee, initially appointed on contract/*ad hoc*/casual basis has continued uninterruptedly would not vest, in such an

⁷ 2024 SCC OnLine SC 3826

⁸ 2025 SCC OnLine SC 221



employee, a right to seek regularisation. This position, however, has been revisited by the Supreme Court in **Jaggo**, which expounds the view that **Uma Devi** has, since long, been misinterpreted. **Jaggo** holds that **Uma Devi** was a judgment intended to curb the evil of backdoor appointments, and was never meant to be a vehicle for the executive to make appointments on temporary, *ad hoc*, casual or contract basis and continue them indefinitely for years on end, thereby rendering the ultimate fate of such employees completely nebulous. It is only, therefore, where the appointment was illegal *ab initio* that, according to **Jaggo**, no right to regularisation would emerge from continued service following such appointment.

17. As such, at the very outset, the Court queried of Ms. Chatterjee, who appeared for the Municipal Corporation in these petitions, as to whether the applicants were not entitled to succeed, given the revisitation of the law by the Supreme Court in **Jaggo**.

18. To be fair to her, Ms. Chatterjee did not, at any point of time, dispute the applicability, to the facts of the applicants before us, of the decision in **Jaggo**. Her initial submission was, however, that the decision in **Jaggo** was *per incuriam*, as it was contrary to earlier decisions rendered by the Supreme Court, of Larger Benches. Subsequently, on her attention being drawn to the fact that the Supreme Court had held that in **South Central Railway Employees Co-op Credit Society Employees Union v B. Yashodabai**⁹ that the High Court could not declare a judgment of the Supreme Court to be

⁹ (2015) 2 SCC 727



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per incuriam, Ms. Chatterjee slightly modified her stand to state that, as earlier judgments of the Supreme Court, which were binding precedents, had elucidated the law contrary to the elucidation which is to be found in **Jaggo**, those earlier decisions would have to be followed. There can be no doubt about the fact that Ms. Chatterjee was clearly entitled to raise the said contention. We would, however, proceed to address its merits, by and by.

19. During the course of arguments, Ms. Chatterjee referred to certain decisions of the Supreme Court which preceded **Jaggo** and have not been noticed in it. Some of them were rendered by Benches of numerically greater strength than the Bench which rendered **Jaggo**.

20. For the sake of convenience, this judgment would refer to Benches consisting of a lesser, and greater, number of Judges of the Supreme Court as “smaller” and “larger” Benches respectively.

21. We are clear in our view that if the High Court is faced with conflicting decisions of Benches of the Supreme Court of varying strengths, the High Court has no option but to follow the decision rendered by the larger Bench, irrespective of the point of time at which the decisions were rendered.

22. A more subtle, and therefore more interesting, issue, however, also arose during the course of arguments, again relating to the principle of precedent. Ms. Chatterjee sought to contend that there were certain observations and findings in **Uma Devi** which had not



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been noticed in *Jaggo*, and were contrary to the observations and findings contained in *Jaggo*. This gave rise to the issue of whether, if a smaller Bench of the Supreme Court has considered the judgment of a larger Bench of the Supreme Court and laid down the law, it is open to the High Court to hold that the law laid down by the latter, smaller Bench, could not be followed as it conflicted with certain observations contained in the earlier larger Bench, which had not been noticed by the smaller Bench. We had our serious doubts as to whether the High Court could adopt such a view, as it would amount to holding that the smaller Bench of the Supreme Court had not considered the decision of the larger Bench in its entirety, and had, therefore, read it only in part. To our mind, it would be extremely questionable as to whether the High Court can so opine. Ms. Chatterjee, however, submits that the High Court can do so and relies, for the purpose, on the judgment of a Full Bench of this Court in *Deepak Kumar v District and Sessions Judge Delhi*¹⁰.

23. We would address this issue at the appropriate stage.

24. The judgments cited by Ms. Chatterjee as enunciating the law differently from *Jaggo* are, apart from *Uma Devi* itself, chronologically,

- (i) *Registrar General of India v V. Thippa Setty*¹¹,
- (ii) *UOI v Sheela Rani*¹²
- (iii) *State of Rajasthan v Daya Lal*¹³,

¹⁰ (2012) 132 DRJ 169 (FB)

¹¹ (1998) 8 SCC 690

¹² (2007) 15 SCC 230

¹³ (2011) 2 SCC 429



- (iv) *Secretary to Govt School Education Department v R. Govindaswamy*¹⁴
- (v) *Official Liquidator v Dayanand*¹⁵
- (vi) *University of Delhi v Delhi University Contract Employees Union*¹⁶,
- (vii) *UOI v Ilmo Devi*¹⁷, and
- (viii) *Malook Singh v State of Punjab*¹⁸.

25. We intend to proceed, in this judgment, by *first* examining the law laid down in *Uma Devi*, *Jaggo* and *Shripal*, *secondly* analyzing the entitlement of the applicants to regularization and other reliefs sought by them on the basis of these decisions and, *thirdly*, examining whether this entitlement, if it exists, is in any way affected by the other judgments cited by Ms Chatterjee. In this context, we would also be noting the decision in *UOI v K Velajagan*¹⁹ which, albeit briefly, echoes the same view.

A. The judgments in *Uma Devi*, *Jaggo*, *Shripal* and *Velajagan*

26. We commence our precedential excursion from *Uma Devi*, rendered by a Constitution Bench of five Hon'ble Judges of the Supreme Court, and around which, essentially, the submissions revolved.

¹⁴ (2014) 4 SCC 769

¹⁵ (2008) 10 SCC 1

¹⁶ (2021) 16 SCC 771

¹⁷ (2021) 20 SCC 290

¹⁸ (2022) 17 SCC 765

¹⁹ MANU/SCOR/15947/2025



27. *Uma Devi*

27.1 The decision in *Uma Devi* was rendered by a Constitution Bench of five Hon'ble Judges of the Supreme Court, arising from a difference of opinion between Benches of the High Court of Karnataka and, resultantly, Benches of the Supreme Court before which appeals from the said decisions were listed. In para 7 of the report, the Supreme Court identified the issue arising for consideration before it, thus:

“The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned.”

27.2 In paras 12 and 13 of the report, the Supreme Court observed thus:

“12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the



Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts.”

Thus, in the above paragraphs, the Supreme Court noted the entitlement of the state to employ persons on temporary or daily wages, even in respect of sanctioned posts. However, if such persons were recruited without a selection process, the Supreme Court observed that it would not be proper for courts to direct their regularization. Considerations of equity would not apply, as regularization of such persons would be at the cost of qualified citizens having a right to apply for appointment against the said posts.

27.3 Paras 15 and 16 of the report distinguished regularization from conferment of permanence, relying on the earlier decisions in *State of Mysore v S V Narayanappa*²⁰, *R N Nanjundappa v T Thimmiah*²¹ and *B N Nagarajan v State of Karnataka*²².

27.4 Thereafter, the legal position was crisply stated thus, in para 17

²⁰ AIR 1967 SC 1071

²¹ (1972) 1 SCC 409



of the report:

“17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.”

27.5 Para 18 went on to observe that, while daily rated workers, doing work identical to those who are regularly appointed, may be entitled to equality of pay, it would be quite different to say that the state was bound to accord permanence to all persons employed as casual labourers or temporary hands, without a process of selection and contrary to the laws governing public employment. The Supreme Court, thereafter, referred to its earlier decision in *State of Haryana v Piara Singh*²³. Paragraphs 23 to 26 of the report, which deal with the said decision, may be reproduced thus:

“23. We may now consider *State of Haryana v Piara Singh*. There, the Court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily-wagers or casual labour. This Court started by saying:

“21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to

²² (1979) 4 SCC 507

²³ (1992) 4 SCC 118



Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service.”

24. This Court then referred to some of the earlier decisions of this Court while stating:

“The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above.”

25. This Court then concluded in paras 45 to 49:

“45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he



must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.”

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularisation and making permanent, was not emphasised here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh* is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.”

27.6 The Supreme Court, thus, noted, the observations, in *Piara*



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Singh, that (i) a person should not be kept on temporary or *ad hoc* status for long, as such extended continuance would give rise to a presumption that there was need and warrant for a regular post and a claim for regularization, (ii) where *ad hoc* appointments had to be made in exigencies of administration, the effort should be to replace such *ad hoc* appointees with regularly selected employees as early as possible, also affording the *ad hoc* employees the right to compete with others for regular selection, (iii) an *ad hoc* or temporary employee could not be replaced by another *ad hoc* or temporary employee, (iv) even while making *ad hoc* or temporary appointments, candidates had ordinarily to be recruited through the employment exchange or, if that was not possible, by following a method consistent with Article 16 of the Constitution of India, by publishing a notice and calling for applications and considering all who applied and (v) if an *ad hoc* or temporary employee was continued for a long spell, the authorities were required to consider his case for regularization if he was eligible and qualified for the post and his service record was satisfactory, subject to considerations of reservation.

27.7 Of all these observations contained in **Piara Singh**, the Constitution Bench only took exception to the last direction, to regularize *ad hoc* or temporary employees merely on the ground that they had continued working for long periods of time. The Supreme Court confirmed that “it cannot be said that this decision has laid down the law that all *ad hoc*, temporary or casual employees, engaged without following the regular recruitment procedure should be made permanent”.



27.8 After referring to further decisions, the Constitution Bench concluded thus:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be



careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after *Dharwad decision* the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and



accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularised since the decisions in *Dharwad*²⁴, *Piara Singh, Jacob*²⁵ and *Gujarat Agricultural University*²⁶ and the like, have given rise to an expectation in them that their services would also be regularised. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either

²⁴ *Dharwad Distt. PWD Literate Daily Wage Employees Assn. v State of Karnataka*, (1990) 2 SCC 396

²⁵ *Jacob M. Puthuparambil v Kerala Water Authority*, (1991) 1 SCC 28

²⁶ *Gujarat Agricultural University v Rathod Labhu Bechar*, (2001) 3 SCC 574



(i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. [See Lord Diplock in *Council for Civil Services Union v Minister of Civil Service*²⁷, *National Buildings Construction Corpn. v S Raghunathan*²⁸ and *Chanchal Goyal (Dr.) v State of Rajasthan*²⁹. There is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after *Dharwad decision*. Though, there is a case that the State had made regularisations in the past of similarly situated employees, the fact remains that such regularisations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some cases by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularised in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularisation of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service

²⁷ 1985 AC 374

²⁸ (1998) 7 SCC 66

²⁹ (2003) 3 SCC 485



Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the



instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of



time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur (Dr.) v Governing Body of the Nalanda College*³⁰. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

53. One aspect needs to be clarified. There may be cases where

³⁰ AIR 1962 SC 1210



irregular appointments (not illegal appointments) as explained in *SV Narayanappa*, *RN Nanjundappa* and *BN Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

27.9 From the above passages, the following propositions emerge:

- (i) Unless the appointment of candidates was in terms of the relevant rules and after proper competition amongst qualified persons, no right would be conferred on the appointee.
- (ii) A contractual appointment came to an end with the expiry of the contract.
- (iii) An appointment on daily wages or casual basis came to an end when it was discontinued.
- (iv) Mere long continuance in service after temporary or casual appointment would not confer, on the appointee, a right



to regularization.

(v) Unless the recruitment was made regularly and in terms of the constitutional scheme, High Courts, under Article 226 of the Constitution of India were ordinarily not to issue directions for absorption, regularization or grant of permanence.

(vi) Accepting the submission that long continuance in service would itself confer a right to regularization would amount to permitting the State to perpetuate illegality in the matter of public employment, which would be a negation of the constitutional scheme adopted by the people of India. It could not be said that the employees had been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution of India.

(vii) In this context, one had to distinguish between illegal appointments and irregular appointments, in the manner set out in para 53 of the report.

27.10 Thus, the decision in *Uma Devi*, holistically read, was obviously intended to do away with the evil of illegal appointment in violation of the constitutional scheme or the applicable rules, without any proper selection and consideration of all persons similarly situated.



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27.11 It does not appear either possible or proper to read *Uma Devi* as laying down an absolute proposition, that long continuance in service after temporary, *ad hoc* or casual employment would not give rise to a regularization even if the initial appointment was made after a proper selection process and comparative consideration of the merits of rival candidates to the post. Expressed otherwise, if the post was a sanctioned post, and selection to the post took place after inviting applications and consideration of the rival merits of the applicant candidates, it would not be proper to deny such candidates, after having served for long period of time, a right to regularization merely on the ground that their initial appointment was not “regular” in nomenclature.

27.12 One may view this concept differently as well. If vacancies against sanctioned posts are available, and applications are invited for persons who desired to be appointed against such posts, and a comparative consideration of the rival merits of the applicants was undertaken, the State could not, by merely calling the appointment *ad hoc*, temporary, casual or contractual, deny such appointees the right to regularization against the posts, especially where their appointments were continued for extended periods of time.

27.13 *Uma Devi*, at any rate, in our view, cannot be said to be sanctioning such a course of action.

28. Jaggo



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28.1 Before advertng to the other decisions cited at the Bar, one may refer to the judgment in *Jaggo*, as that represents, in a sense of speaking, the latest exposition of law by the Supreme Court in the matter of right of casual, contractual, temporary or *ad hoc* employees to regularization.

28.2 The appellants³¹ before the Supreme Court were engaged by the Central Water Commission³² as part-time *ad hoc safaiwalas/khalasis*, on various dates between 1993 and 2004. They performed essential housekeeping and support functions at establishment of CWC, thereby contributing to smooth functioning of the CWC's administrative operations.

28.3 Jaggo etc. moved the Central Administrative Tribunal by way of OA 2211/2015, seeking regularization. By order dated 17 April 2018, the OA was dismissed, holding that Jaggo etc. had not been appointed against "regular vacancies" and had not completed "sufficient full time service", so that their cases did not attract the principles governing regularization.

28.4 This view was upheld by this Court, which was approached by Jaggo etc. by way of WP (C) 6822/2018. This Court, in dismissing the writ petition, followed the decision in *Uma Devi*. It was also held that, Jaggo etc. did not possess the minimum educational qualifications ordinarily required for regular appointments and that the CWC had subsequently outsourced the maintenance activities which

³¹ "Jaggo etc." hereinafter

³² "CWC" hereinafter



were being carried out by Jaggo etc.

28.5 Aggrieved by the decision of this High Court, Jaggo etc. approached the Supreme Court.

28.6 We deem it appropriate to reproduce the following paragraphs from the judgment of the Supreme Court:

“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



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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:

S. No.	Name	Education al Qualificati on	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 Ld. 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



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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 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*³³, 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

³³ (2024) 1 SCR 1230



*the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of **Uma Devi** (supra).*

7. *The judgment in the case **Uma Devi** (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...”*

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

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

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for



employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgment of the United State in the case of *Vizcaino v Microsoft Corporation*³⁴ 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

³⁴ 97 F.3d 1187 (9th Cir. 1996)



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.

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.”

28.7 From the afore-extracted passages from *Jaggo*, the following principles emerge:

- (i) The Supreme Court held that the long and uninterrupted service rendered by Jaggo etc., extending well beyond 10 years could not be brushed aside by levelling their initial employments as part time or contractual. Importantly, the Supreme Court held that the “essence of their employment” had to 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”. This passage denotes an important development in the



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law, by which the Supreme Court has effectively lifted the veil of the nomenclature conferred to the appointment of the employees. The Supreme Court had held that it is not the nomenclature of the appointment which is of relevance, but the nature of the service rendered by the employees. The nature of the service by the employees would in turn determine the actual nature of their employment. The Supreme Court has identified, for this purpose, the relevant considerations as being (a) the sustained contribution of the employees, (b) the integral nature of their work and (c) whether any evidence exists to indicate that their entry was through any illegal or surreptitious route.

(ii) Where the employees had been engaged in performing essential duties, indispensable for the day to day functioning of the office, on a daily and continuous basis over an extended period, the responsibilities undertaken by the employees had to be treated as akin to those typically associated with sanctioned posts.

(iii) In such circumstances, it could not be sought to be contended by the establishment that the posts held by the employees on *ad hoc*/part time/casual basis were not regular posts, as the nature of work rendered by the employees was perennial and fundamental to the functioning of the offices. Significantly, the Supreme Court holds that “the recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were



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labelled”.

(iv) Subsequent outsourcing of the same tasks to private agencies fortified the conclusion that the services rendered by the employees were inherently needed by the establishment, and that the work undertaken by them was neither temporary nor occasional.

(v) Consistent satisfactory performance, by the employees, over a long period of time, further solidified their claim for regularization.

(vi) Where the job rendered by the employees was menial in nature, such as cleaning, sweeping, dusting and gardening, the establishment could not seek to contend that the employees did not possess the necessary educational qualifications for the post. The educational criteria were never central to the engagement by the employees or to the performance, by them, of their duties. Insisting on formal educational requirements would amount, in such circumstances, to “an unreasonable hurdle”.

(vii) Where, in such circumstances, the employees’ roles were essential and indistinguishable from the roles of other regular employees, the employees had rendered sustained service over extended period and there was no adverse report regarding their performance, equitable treatment and regularization of the services of the employees was warranted. Denial of such



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regularization amounted to manifest injustice, and required rectification.

(viii) The decision in *Uma Devi* did not intend to penalize employees who had rendered long years of service, fulfilling ongoing and necessary functions of the establishment. It was intended to prevent back door entries and illegal appointments, which circumvented constitutional requirements.

(ix) Where the appointments were not illegal, but possibly “irregular” and where the employees had rendered sanctioned functions continuously over a long period, the need for a fair and humane resolution became paramount. Thus, held the Supreme Court, “prolonged, continuous and unblemished service performing tasks inherently required on a regular basis (could), over the time, transform what was initially *ad hoc* or temporary into a scenario demanding fair regularization”.

(x) Where the initial appointment of the employee was termed “temporary”, but the employee had performed the same duties as performed by regular employees over a considerable period, procedural formalities could not be used to deny regularization by service³⁵.

(xi) The Court was required to look beyond the surface label of the work being undertaken by the employee and to consider

³⁵ Refer **Vinod Kumar v UOI (2024 1 SCR 1230)**



the realities of employment, which included continuous, long term service, indispensable duties and absence of any *mala fides* or any illegalities in their appointments. Refusing regularization to such employees, merely because the original terms of their employment did not explicitly provide for regularization, or because an outsourcing policy had been belatedly introduced, would be contrary to principles of fairness and equity.

(xii) Among the ways in which such temporary employees were exploited were

- (a) misuse of “temporary” labels,
- (b) arbitrary termination,
- (c) lack of career progression,
- (d) using outsourcing as a shield, and
- (e) denial of basic rights and benefits

(xiii) *Uma Devi* was intended to curtail the practice of back door employments and ensure that appointments adhere to constitutional principles. It was regrettable that *Uma Devi* was being interpreted and misapplied to deny legitimate claims of long serving employees. The judgment distinguished between “illegal” and “irregular” appointments. It provided for regularisation, as a one-time measure, of employees who were engaged in duly sanctioned posts, and had served continuously for more than 10 years, but whose initial appointment was “irregular”, in that it lacked adherence to procedural formalities.



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28.8 Premised on these principles, the Supreme Court, in *Jaggo*, directed regularization of the appellants before it, though Jaggo etc., were held not to be entitled to back wages.

29. *Shripal*

29.1 The appellants before the Supreme Court³⁶ were engaged as Gardeners/Malis in the horticulture department of the Ghaziabad Nagar Nigam³⁷, since 1998-1999. They claimed to have continuously discharged horticultural and maintenance duties, such as planting trees, maintaining parks and beautifying public places, under direct supervision of the GNN. However, no formal appointment letters were issued to them.

29.2 In 2007, Shripal etc. raised an industrial dispute before the Conciliation Officer at Ghaziabad, claiming regularisation of their services and consequential benefits. They alleged that, on the said dispute being raised, the GNN orally terminated the services of several of them.

29.3 The disputes raised by Shripal etc. were referred to the Labour Court which decided the references by two orders dated 3 June 2011 and 11 October 2011. In the order dated 3 June 2011, the Labour Court held that the termination of the workmen in that case was illegal, and directed their reinstatement with 30% back wages. However, in order dated 11 October 2011, the Labour Court dismissed

³⁶ “Shripal etc.” hereinafter

³⁷ “GNN” hereinafter



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the claims of the workmen, holding that they had not been engaged directly by the GNN, but through a contractor and that they did not, therefore, have any enforceable right to regularisation.

29.4 The GNN, in the case of the first order dated 3 June 2011, and the workmen in the case of second order dated 11 October 2011, approached the High Court of Allahabad. The High Court disposed of all the writ petitions by a common judgment dated 1 March 2019, directing that the workmen be re-engaged on daily wages with pay equivalent to the minimum regular pay-scale of gardeners and that their cases be considered for future regularisation if permissible in law.

29.5 This judgment was assailed by the GNN as well as by the workmen before the Supreme Court. The workmen sought full reinstatement with regularisation whereas the GNN challenged the judgment of the High Court to the extent it granted relief to the workmen.

29.6 The Supreme Court decided the issue before it thus:

“10. The Respondent Employer consistently labelled the Appellant Workmen as casual employees (or workers engaged through an unnamed contractor), yet there is no material proof of adherence to Section 6N of the U.P. Industrial Disputes Act, 1947, which mandates a proper notice or wages in lieu thereof as well as retrenchment compensation. In this context, whether an individual is classified as regular or temporary is irrelevant as retrenchment obligations under the Act must be met in all cases attracting Section 6N. Any termination thus effected without statutory safeguards cannot be undertaken lightly.



11. Furthermore, the Employer's stance that there was never a direct employer-employee relationship is wholly unsubstantiated. If, in fact, the Appellant Workmen had been engaged solely through a contractor, the Employer would have necessarily maintained some form of contract documentation, license copies, or invoices substantiating the contractor's role in hiring, paying, and supervising these workers. However, no such documents have been placed on record. Additionally, the Employer has failed to establish that wages were ever paid by any entity other than its own Horticulture Department, which strongly indicates direct control and supervision over the Workmen's day-to-day tasks is a hallmark of an employer-employee relationship. Had there been a legitimate third-party contractor, one would expect to see details such as tender notices, contract agreements, attendance records maintained by the contractor, or testimony from the contractor's representatives. The absence of these crucial elements undermines the Employer's claim of outsourced engagement. In fact, it appears that the Workmen were reporting directly to the Horticulture Department officials, receiving instructions on their duties, and drawing wages issued under the Municipality's authority. This pattern of direct oversight and wage disbursement substantially negates the narrative that they were "contractor's personnel." Consequently, the discontinuation of their services carried out without compliance with statutory obligations pertaining to notice, retrenchment compensation, or approval under Section 6E of the U.P. Industrial Disputes Act, stands on precarious ground. The very foundation of the Employer's defense (i.e., lack of an employer-employee relationship) is not supported by any credible or contemporaneous evidence.

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 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.

14. The Respondent Employer places reliance on *Umadevi* (supra) to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, *Uma Devi* itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, *Uma Devi* cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite “temporary” employment practices as done by a recent judgment of this court in *Jaggo v Union of India* in the following paragraphs:

“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.

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 labelled 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.”



16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.

18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.



III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms.

19. In view of the above, the appeal(s) filed by the workmen are allowed, whereas the appeal(s) filed by the Nagar Nigam Ghaziabad are dismissed.”

29.7 Thus, the Supreme Court, in para 15 of its report, reiterated the view adopted by it in *Jaggo*. Particularly with respect to the case of Shripal etc., the Supreme Court held that,

- (i) the work of upkeep of parks, horticultural task and city beatification, undertaken by Shripal etc., were integral to GNN’s municipal functions and was, therefore, inherently perennial, rather than sporadic or project based,
- (ii) the entitlement of Shripal etc to regularisation could not be defeated by a mere ban on fresh recruitment, put in place by the State Government,
- (iii) by contracting, from Shripal etc., the same work as was being performed by regular gardeners and not adequately



compensating them, the GNN had effectively engaged in an unfair labour practice,

(iv) the principle of “equal pay for equal work” could not be casually disregarded when the workers had served for extended periods in roles resembling those of permanent employees,

(v) long standing assignments, under the GNN’s direct supervision, belied any notion that the employments of Shripal etc. were in the nature of short-term casual engagement,

(vi) the reliance, by GNN, on the judgment in *Uma Devi*, was misconceived because

(a) *Uma Devi* distinguished between appointments which were illegal and those which were merely irregular,

(b) appointments which were merely irregular were eligible for regularisation on meeting certain conditions,

(c) *Uma Devi* could not be served as a shield to justify exploitative engagements persisting for years without legitimate recruitment and

(d) given the record which showed that there was contractor-based arrangement between GNN and Shripal etc., and a consistent need for permanent horticultural staff, the alleged ban on fresh recruitment could not justify indefinite daily-wage status or continued unfair practices,

(vii) Shripal etc. had continuously rendered services for several years, in some case for more than a decade,

(viii) Indian labour Law strongly disfavoured perpetual daily-



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wage or contractual engagements in circumstances where the work was permanent in nature, and

(ix) morally and legally, the workers who fulfilled ongoing municipal requirements year after year could not be dismissed summarily as dispensable, particularly where the engagement was not through a contractor.

30. *K Velajagan*

30.1 The respondents before the Supreme Court in this case³⁸ were appointed on hourly basis as lecturers in the Motilal Nehru Government Polytechnic College, Puducherry, on 20 January 2005. They claimed regularization from the dates of their initial appointment, with consequential benefits. The Central Administrative Tribunal which was approached by Velajagan etc., allowed their OA, and the High Court, which was approached by UOI against the said decision, upheld the judgment of the Tribunal. Aggrieved thereby, the UOI approached the Supreme Court.

30.2 The Supreme Court, noting the fact that Velajagan etc., had been working since 2005 without blemish, and possessed the requisite qualifications for appointment as lecturers, upheld the decision of the Tribunal and the High Court directing their regularization, even though had not been called upon to participate in a regular selection process.

³⁸ “Velajagan etc” hereinafter



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31. Impact, on the present writ petitions, of the decisions in *Jagoo*, *Shripal* and *K. Velajagan* in the backdrop of *Uma Devi*

31.1 Without reiterating the principles emerging from *Jagoo*, *Shripal* and *Velajagan*, if the said principles are applied to the applicants, the applicants have, clearly, a case for regularization.

31.2 In the case of the petitioners in WP(C) 11693/2019, WP(C) 11694/2019, WP (C) 11695 /2019 and WP (C) 7915/2023, the following position emerges:

- (i) The petitioners had been working with the respective Municipal Corporations, since the following dates:

Name of the petitioner	Date of Joining	Corporation
In W.P. (C) No. 11693/2019		
Deen Bandhu Garg	22 December 2007	SDMC ³⁹
Anita Devi	13 December 2007	
Jai Singh	15 December 2007	
Jyoti Deshwal	11 December 2007	
Sushma	13 December 2007	
Meenu Sagar	2 January 2008	
Salma	2 July 2008	
Raj Kamal	1 January 2003	
In W.P. (C) No. 11694/2019		
Rishi Kapoor	1 September 2003	EDMC ⁴⁰
Sukhpal Singh	12 December 2007	
Tilakram	11 July 2008	
In W.P. (C) No. 11695/2019		

³⁹ South Delhi Municipal Corporation

⁴⁰ East Delhi Municipal Corporation



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Dinesh	12 September 2005	Nr DMC ⁴¹
Jyoti Rani	12 December 2007	
In W.P. (C) No. 7915/2023		
Suresh Chand Sharma	2 January 2003	SDMC

(ii) The recruitment of the applicants was pursuant to a formal advertisement issued by the concerned municipal corporation.

(iii) Though the appointment was stated to be on contract, the candidates were required to fulfil the prescribed qualifications for the posts against which they were appointed.

(iv) The contract was stated to be for six months or till receipt of selection list from the Delhi Subordinate Services Selection Board⁴², whichever was earlier, thereby indicating that the appointment was against regularly sanctioned posts.

(v) This appointment continued uninterruptedly, except for breaks during summer vacations, till the applicants approached the Tribunal.

(vi) The applications were invited on the basis of experience possessed by the candidates.

⁴¹ North Delhi Municipal Corporation

⁴² "DSSSB" hereinafter



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(vii) The advertisement also provided for reservation for scheduled castes/scheduled tribes/other backward classes as well as physically handicapped/blind and ex-servicemen, for which the candidates were required to furnish the relevant certificates.

31.3 In the case of Anita Kumari, too, the recruitment was against a similar advertisement, inviting applications by persons possessing the prescribed educational qualifications for appointment to the posts, which was sanctioned posts, and was subject to an open selection process.

31.4 The manner in which the applicants were appointed, therefore, clearly partook of all indicia of a regular selection process, with adherence to the prescribed qualifications and age stipulations, initiation by a regular advertisement published in the newspapers, and competitive selection amongst applicants, on the basis of merit. *Jaggo* and *Shripal* clearly consign, to the background in such cases, the nomenclature which might have been accorded to the appointments as initially made, whether “contract”, “temporary”, or “*ad hoc*”.

31.5 The applicants, admittedly, continued working for the municipal corporations, except, in some cases, for breaks during summer vacations, uninterruptedly and without any complaint whatsoever, for decades. The MCD could not, therefore, be heard to contend that their appointments were *ad hoc* or contractual, for a



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limited period of time. *Jaggo* requires the Court, in such cases, to effectively lift the veil, and assess, for itself, whether the appointment was really temporary, or for a particular span of time or catering to a particular project. An appointment which was initially intended to be for six months clearly lost its “temporary” or “*ad hoc*” character, it continues for decades on end.

31.6 The applicants were performing similar the same work as was being performed by regular teachers recruited by the municipal corporations. In any event, as they were engaged in teaching students, it was obvious that the work performed by them was perennial and part of the essential sovereign functions of the MCD.

31.7 In that view of the matter, applying the law laid down in *Jaggo*, *Shripal* and, to a certain extent, *Velajagan*, the aforesaid factors clearly make out a case for regularisation of the services of the applicants, from the dates of their initial appointment.

31.8 Do the applicants lose their right because they did not participate in the regular selections held by the MCD?

31.8.1 One of the contentions that Ms Chatterjee sought to canvas was whether, in view of the fact that the MCD had resorted, from time to time, to effect regular recruitments, albeit for a limited number of posts of teacher, equivalent to those being held by the applicants, and the applicants had not chosen to participate, they could not now



maintain a claim for regularization.

31.8.2 We, frankly, do not see why not.

31.8.3 *Jaggo* and *Shripal* do not carve out any such exception, and we certainly cannot read exceptions into the law enunciated by the Supreme Court, thereby narrowing its scope and amplitude. The right to regularization, that flows from *Jaggo* and *Shripal*, flows from the initial appointment being after an advertisement followed by a selection process, and continued unblemished service for a number of years. Additionally, in the case of the applicants before us, the appointment was after application in response to an advertisement duly published in the national dailies, and was after the applicants had been subjected to a competitive selection process. Further, the appointments were against sanctioned posts. *Jaggo* and *Shripal* hold, in clear and unexceptionable terms, that, in such a case, the characterization of the appointment as *ad hoc* or contractual would amount to an unfair labour practice, which the law cannot tolerate. The right to regularization, that enures as a result of several years of unblemished continuous service in work that is clearly perennial in nature, or part of the essential and inalienable functions of the employer – the MCD in the present case – is absolute, and cannot be eviscerated by holding regular selections in the interregnum. If the applicants had participated in the said selections and succeeded, so be it; that they did not, however, cannot detract from their right to regularization which arises out of the several factors outlined above. Moreover, in the present case, it is an acknowledged case that, even



after making regular selections, the need for the applicants continued, as the number of regular appointees were not sufficient to discharge the work that was required to be discharged. The need for the applicants, and their services, therefore, continues.

31.8.4 Ms Chatterjee's emphasis on the fact that a few regular selections had taken place, in the interregnum, in which the applicants did not choose to participate, therefore, cannot detract, in our view, from their right to regularization, flowing from the enunciation of the law in *Jaggo* and *Shripal*.

31.9 Ms. Chatterjee, too, in her submissions, did not, as we have already observed, seriously dispute the position that the case of the applicants was covered by the decision in *Jaggo* and *Shripal*. Her contention is, however, that the judgments in *Jaggo* and *Shripal* cannot be followed, as they are divergent, on many points, with the position of law enunciated in earlier decisions of larger Benches. Apart from the judgment in *Uma Devi*, Ms. Chatterjee has placed reliance on the decisions enumerated in para 22 *supra*.

32. We do not intend this judgment to be a thesis on harmonising of the decision in *Jaggo* with earlier decisions.

33. As we have noted, on facts and in law, the cases before us are fully covered by the judgments in *Jaggo* and *Shripal*.

34. Judgments cited by Ms Chatterjee



34.1 We have perused the judgments cited by Ms. Chatterjee and find that there are, in each case, distinguishing features, which do not apply to the case before us and which cannot, therefore, dilute the effect, on the facts of the case before us, of the judgments in *Jaggo* and *Shripal*. We may briefly refer to these features thus:

34.2 *V. Thippa Setty*

V. Thippa Setty did not specifically deal with the right to regularisation, but only with whether regularisation could be given from a back date, otherwise, it would disturb the seniority of regularly selected candidates. Besides, the decision in *V. Thippa Setty* was rendered prior to *Uma Devi*.

34.3 *Sheela Rani*

34.3.1 Similarly, in *Sheela Rani*, too, the issue before the Supreme Court was whether regularisation could be granted from the date of initial appointment. In that case, the Supreme Court specifically observed that the respondent Sheela Rani before it, had misstated facts, as she claimed that her case for appointment have been referred by the employment exchange, whereas, in fact, her name was registered with the employment exchange only on 25 March 1983, whereas she was engaged as a casual worker on 17 November 1982.

34.3.2 Interestingly, one of the contentions advanced by *Sheela Rani*



was that there were certain employees, who have been regularised from the dates of their initial engagement. In para 9 of the report, the Supreme Court noted that the said casual workers, who have been regularised from the dates of their initial engagement, were technical persons, whereas Sheela Rani was an Inquiry Clerk. In para 10 of the report, the Supreme Court noted that, *as daily rated workers were not required to possess the requisite qualifications prescribed for regular work or to fulfil the requirement relating to which at the time of recruitment, they could not be equated with regular workmen, nor could they claimed the pay scale granted to regular workmen.*

34.3.3 In the present case, however, there is no dispute about the fact that the very advertisement, against which the applicants had applied and pursuant to which they were recruited on contract, required them to satisfy the prescribed qualifications for the posts, which were sanctioned posts. The advertisement also required the applicants to satisfy the prescribed age requirement. Though the Supreme Court referred to the decision in *V. Thippa Setty*, the facts in *Sheela Rani* were clearly distinguishable from those before us.

34.4 Official Liquidator

34.4.1 The respondents before the Supreme Court in *Official Liquidator* were, as per para 48 of the report, not selected in accordance with the procedure prescribed in the existing recruitment rules, nor appointed against sanctioned posts. They, in fact, constituted an entirely *sui generis* class of appointees, as they were



appointed merely to deal with liquidation proceedings in respect of particular companies, to augment the existing staff. In para 3(i) of the decision, the Supreme Court noted that, in the offices of the Official Liquidators attached to different High Courts, there were two categories of employees. The first category consisted of employees appointed against sanctioned posts, recruited in accordance with the prescribed procedure. The second category comprised employees engaged/employed by the Official Liquidators pursuant to sanction accorded by the concerned company court under Rule 308⁴³ of the Companies (Court) Rules, 1959. The respondents before the Supreme Court belonged exclusively to this latter category. Their salary was paid from the accounts of the concerned company and they were, therefore, referred to as “company paying staff”. Paras 49 and 50 of the report manifest this position:

“49. Although neither of the parties to the appeals nor the intervenors have placed before the Court advertisements issued by the Official Liquidators of the Bombay, Calcutta, Delhi and Madhya Pradesh or any other High Court for employment of special or additional staff in accordance with the sanction accorded by the Court concerned and we have not been apprised of the specific terms and conditions, subject to which the respondents were employed/engaged by the Official Liquidators but from the tenor of the pleadings and other records, it can be safely inferred that the respondents were appointed on purely temporary basis for a fixed period with a stipulation that they shall not be entitled to seek regularisation or absorption in the regular cadre against the sanctioned post. Those who applied in response to the advertisements issued by the Official Liquidators must have been aware of the fact that they were being engaged/employed pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules in connection with liquidation proceedings; that their appointments will not be against the posts sanctioned by the

⁴³ **308. Employment of additional or special staff.** – Where the Official Liquidator is of opinion that the employment of any special or additional staff is necessary in any liquidation, he shall apply to the Court for sanction, and the Court may sanction such staff as it thinks fit on such salaries and allowances as to the Court may seem appropriate.



Government; that they will have no right to claim absorption in the regular cadre and that they will be paid salaries and allowances which may be fixed by the Court. They must have accepted the appointment/engagement knowing fully well that they will have fixed tenure without any right to continue in service or to seek absorption against the sanctioned posts.

50. It was neither the pleaded case of the respondents before the High Courts nor Shri Bhaskar P. Gupta and other learned counsel appearing on their behalf argued before this Court that their clients were lured into accepting employment as company-paid staff by the Official Liquidators by promising absorption in future against the sanctioned posts or that they were coerced by some authority to accept such employment. Therefore, they cannot be heard to complain of the violation of Articles 14 and 16 of the Constitution on the ground that even after having worked for more than one decade, they have not been absorbed in the regular cadres under the Government. In our opinion, after having applied for and accepted employment/engagement as company-paid staff with fixed tenure superimposed by a stipulation that they will have no right to continue in service or to be absorbed in the regular cadres, the respondents are estopped from seeking a direction for their absorption against the posts sanctioned by the Government of India and the High Courts committed a serious error in granting their prayer.”

34.4.2 It would be inappropriate, in our view, to apply, to a case of persons employed by the Government, the law declared by the Supreme Court in the case of company paid staff, to a case of recruitment by the Governmental authority, irrespective of the character or nature of appointment.

34.4.3 That said, the Supreme Court did address, later in the judgment, the decision in *Uma Devi*, and the observations made by the Supreme Court in that regard are relevant. Paras 68 to 71 of the report, to the extent relevant, as under:

“68. The abovenoted judgments and orders encouraged the political set-up and bureaucracy to violate the soul of Articles 14



and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoils system which prevailed in the United States of America in the sixteenth and seventeenth centuries got a firm foothold in this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. This was recognised by the Court in *Delhi Development Horticulture Employees' Union v Delhi Admn*⁴⁴ in the following words:

“23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the employment exchange, it has become a common practice to ignore the employment exchange and the persons registered in the employment exchanges, and to employ and get employed directly those who are either not registered with the employment exchange or who though registered are lower in the long waiting list in the employment register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the employment exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments,

⁴⁴ (1992) 4 SCC 99



public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts.”

69. The menace of illegal and backdoor appointments compelled the courts to rethink and in a large number of subsequent judgments this Court declined to entertain the claims of ad hoc and temporary employees for regularisation of services and even reversed the orders passed by the High Courts and Administrative Tribunals — *Institute of Management Development v Pushpa Srivastava*⁴⁵, *M. A. Haque (Dr.) v Union of India*⁴⁶, *J&K Public Service Commission v Dr. Narinder Mohan*⁴⁷, *Arundhati Ajit Pargaonkar (Dr.) v State of Maharashtra*⁴⁸, *Union of India v Kishan Gopal Vyas*⁴⁹, *Union of India v Moti Lal*⁵⁰, *Hindustan Shipyard Ltd. v Dr. P. Sambasiva Rao*⁵¹, *State of HP v Suresh Kumar Verma*⁵², *Surinder Singh Jamwal (Dr.) v State of J&K*⁵³, *E. Ramakrishnan v State of Kerala*⁵⁴, *Union of India v Bishamber Dutt*⁵⁵, *Union of India v Mahender Singh*⁵⁶, *P. Ravindran v UT of Pondicherry*⁵⁷, *Ashwani Kumar v State of Bihar*⁵⁸, *Santosh Kumar Verma v State of Bihar*⁵⁹, *State of U. P. v Ajay Kumar*⁶⁰, *Patna University v Dr. Amita Tiwari*⁶¹ and *Madhyamik Shiksha Parishad v Anil Kumar Mishra*⁶².

70. The shift in the Court's approach became more prominent

⁴⁵ (1992) 4 SCC 33

⁴⁶ (1993) 2 SCC 213

⁴⁷ (1994) 2 SCC 630

⁴⁸ 1994 Supp (3) SCC 380

⁴⁹ (1996) 7 SCC 134

⁵⁰ (1996) 7 SCC 481

⁵¹ (1996) 7 SCC 499

⁵² (1996) 7 SCC 562

⁵³ (1996) 9 SCC 619

⁵⁴ (1996) 10 SCC 565

⁵⁵ (1996) 11 SCC 341

⁵⁶ (1997) 1 SCC 245

⁵⁷ (1997) 1 SCC 350

⁵⁸ (1997) 2 SCC 1

⁵⁹ (1997) 2 SCC 713

⁶⁰ (1997) 4 SCC 88

⁶¹ (1997) 7 SCC 198

⁶² (2005) 5 SCC 122



in *A Umarani v Coop. Societies*⁶³, decided by a three-Judge Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularisation of the appointments made in violation of the mandatory statutory provisions.

71. In *State of Karnataka v Umadevi* the Constitution Bench again considered the question whether the State can frame scheme for regularisation of the services of ad hoc/temporary/daily wager appointed in violation of the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularisation or absorption in the regular cadre and whether the Court can issue mandamus for regularisation or absorption of such appointee and answered the same in negative. The Court adverted to the theme of constitutionalism in a system established on the rule of law, expanded meaning given to the doctrine of equality in general and equality in the matter of employment in particular, multifaceted problems including the one relating to unwarranted fiscal burden on the public exchequer created on account of the directions given by the High Courts and this Court for regularisation of the services of persons appointed on purely temporary or ad hoc basis or engaged on daily wages or as casual labourers, referred to about three dozen judgments including *R. N. Nanjundappa v T. Thimmiah, Daily Rated Casual Labour v Union of India*⁶⁴, *Bhagwati Prasad v Delhi State Mineral Development Corpn.*⁶⁵, *Dharwad Distt. PWD Literate Daily Wage Employees Assn. v State of Karnataka, State of Haryana v Piara Singh and State of Punjab v Surinder Kumar*⁶⁶ and held:

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make

⁶³ (2004) 7 SCC 112

⁶⁴ (1988) 1 SCC 122

⁶⁵ (1990) 1 SCC 361

⁶⁶ (1992) 1 SCC 489



them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts



initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

34.4.4 Thus, even in *Official Liquidator*, the Supreme Court observed that the decision in *Uma Devi* had been necessitated because, consequent on the liberal approach of the Supreme Court prior to that decision, a veritable industry of backdoor appointments had sprung up, and persons who could pull the necessary strings in the power corridors were managing to secure appointment, resulting in large scale and rampant corruption. It was in these circumstances that the Court had to re-think the entire position, given “the menace of illegal and backdoor appointments”. Thus, the Supreme Court in *Official Liquidator*, actually reiterated the same view which later found voice in *Jaggo* and *Shripal*, i.e., that *Uma Devi* was a decision which had become necessary on account of large scale backdoor appointments in public employment.

34.4.5 In any event, there is no comparison whatsoever between the company paid staff, who were the respondents before the Supreme Court in *Official Liquidator* and the applicants in the writ petitions



before us.

34.5 *Daya Lal*

34.5.1 The respondents in *Daya Lal* were temporarily appointed as Assistant Superintendent in aided hostels in 1985-86. They claimed parity with their counter parts in government hostels and regularisation as Hostel Superintendent from the dates of their initial appointment, along with salary at a par with Hostel Superintendents in Class C Hostels of the Social Welfare Department. The Supreme Court identified the two issues arising before it for consideration thus, in para 11 of the report:

“(i) Whether persons appointed as Superintendents in aided non-governmental hostels are entitled to claim absorption by way of regularisation in government service or salary on a par with Superintendents in government hostels?

(ii) Whether part-time cooks and chowkidars appointed temporarily by Mess Committees of Government Hostels, with two or three years' service, are entitled to regularisation by framing a special scheme?

34.5.2 Following this, the Supreme Court culled out the well settled principles relating to regularisation and parity in pay, relevant to the issue before it, thus in para 12:

“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed



in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, *back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.*

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be “litigious employment”. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under



a statute.”

34.5.3 Having thus extracted the principles that applied, the Supreme Court address the controversy, in the backdrop of the facts before it, as under, in paras 18 and 19:

“18. It is thus evident that insofar as aided hostels were concerned, the Government was liable only to extend aid by way of a grant to students of 6 to 8 standards and students of 8 to 11 standards, staying in such hostels, to meet the expenditure of food, water, electricity, clothes, haircutting, soap, oil and shoes and another grant for books and stationery of such students. The Government was not liable to bear the expenses of salary and allowances of the employees of the aided hostels and it was for the private organisations which ran the aided hostels to meet the salaries of employees from their own resources. The persons employed in the aided hostels were the employees of the respective organisations running those hostels and not the employees of the Government. The Government has merely prescribed the eligibility conditions to be fulfilled by the private organisations to get grants to meet the food and education expenses of students staying in such hostels. Therefore under no stretch of imagination persons employed by the aided hostels could be termed as persons employed by the State Government. Nor could the Government be held liable for their service conditions, absorption, regularisation or salary of employees of private hostels.

19. If the employees (either permanent or temporary) of the aided hostels are not the employees of the Government, but of the aided private charitable organisations which run such aided hostels, they could not obviously maintain any writ petition claiming the status or salary on a par with the corresponding post holders in State Government service, nor claim regularisation of service under the State Government. Hence, the writ petitions by persons employed in aided hostels for relief of regularisation or parity in pay, were not maintainable and the decision of the High Court granting any relief to them cannot be sustained.”

34.5.4 Thus, while culling out the principles that applied, the Supreme Court clearly recognised the fact that “while something that is irregular for want of compliance with one of the elements in the



process of selection which does not go to the root of the process can be regularised, backdoor entries and appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised”. Similarly, the Supreme Court observed that “even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post”. These observations, in fact, support the case of the applicants before us, as

- (i) their appointments cannot be treated as backdoor entries,
- (ii) they were not ineligible for the post to which they were appointed,
- (iii) the appointments were pursuant to a duly issued advertisement and selection, and
- (iv) the applicants were working against sanctioned posts.

34.5.5 *Daya Lal*, therefore, thus cited by Ms. Chatterjee, actually supports the case of the applicants.

34.6 *R. Govindaswamy*

R. Govindaswamy dealt with part time sweepers. Inasmuch as the applicants before us are not part time employees, we do not deem it necessary to advert to the said decision.

34.7 *University of Delhi*



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34.7.1 The University Grants Commission⁶⁷ had, on 31 August 1999, imposed a ban on filling up of non-teaching posts in all institutes / universities and affiliated colleges. In relaxation thereof, on 12 January 2011, the UGC sanctioned and allowed the Delhi University⁶⁸ to fill up 255 posts of Junior Assistants, while suggesting changes in the Recruitment Rules⁶⁹ of the DU. Accordingly, the RRs were amended and an advertisement was published on 6 November 2013 in leading newspapers, inviting applications for 255 posts of Junior Assistants in the DU.

34.7.2 In the interregnum, between 2003 and 2013, around 300 Junior Assistants were appointed by the DU on contract basis. These Junior Assistants were members of the Delhi University Contract Employees Union⁷⁰ which had instituted the litigation, which led to the passing of the judgment under discussion by the Supreme Court, on their behalf.

34.7.3 The DUCEU, in its writ petition, sought a direction to the DU to formulate a scheme for regularising the services of the members of the DUCEU, who were working on contract/*ad hoc*/daily wages after relaxation of age requirement so as to confer permanent status on them, apart from other reliefs.

34.7.4 The writ petition was dismissed by a learned Single Judge of this Court. The Letters Patent Appeal, preferred thereagainst by the DUCEU, was disposed of by the Division Bench of this Court with a

⁶⁷ “UGC”, hereinafter

⁶⁸ “DU”, hereinafter

⁶⁹ “RRs”, hereinafter

⁷⁰ “DUCEU”, hereinafter



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direction to the DU to decide and hold an appropriate test for selection in terms of the notification to that effect keeping in mind the fact that the members of the DUCEU, who had been working on contract basis, had obtained their essential qualifications much before fresh applicants and had rendered satisfactory service.

34.7.5 Aggrieved thereby, the DU approached the Supreme Court.

34.7.6 The Supreme Court, following the judgment in *Uma Devi* and *Official Liquidator*, held that the contract employees before it, who were members of the DUCEU, could not claim the benefit of regularisation.

34.7.7 But for this, there is no further discussion in the judgment of the Supreme Court. On the basis of the facts which emerge from the said judgment, it is clear that the case of the applicants before us cannot be analogised to that of the respondents before the Supreme Court. There is no indication that the respondents before the Supreme Court were appointed after a due selection process or against sanctioned posts. Rather, the facts as set out in the decision of the Supreme Court seem to indicate that regular selections for appointment against the sanctioned posts were underway and, in the interregnum, the respondents before the Supreme Court have been appointed on temporary/*ad hoc* basis. A reading of paras 4 and 5 of the report in *University of Delhi* seem to indicate that, in fact, no advertisement issued prior to the appointment of the respondents before the Supreme Court.



34.7.8 The decision in *University of Delhi* cannot, therefore, aid Ms. Chatterjee in the submissions that she seeks to advance.

34.8 Ilmo Devi

34.8.1 This decision is completely distinguishable on facts, and, in view thereof, in fact, no detailed discussion of the judgment is necessary. Suffice it to state that the respondents before the Supreme Court, were part time sweepers/*Safai Karamcharis*, appointed on daily wages for less than five hours a day and paid from the contingent fund. Further, there was no regular sanctioned post of *Safaiwala/Safai Karamchari*. The claim of the said respondents to regularisation was, therefore, bound to fail. The reasoning of the Supreme Court, in holding against the respondents before it, as contained in paras 9, 13, 14, 16 and 17 merit reproduction thus:

“9. At the outset, it is required to be noted that *the respondent-original applicants were working as contingent paid part-time sweepers* (Safai Karamcharies working for less than five hours a day) in a Post Office at Chandigarh. It is not in dispute and cannot be disputed that *there are no sanctioned posts of Safaiwalas in the Post Office in which the respondents were working. There is no documentary evidence on record to establish and prove that the respondents were working continuously. Even otherwise as observed hereinabove, they were working as contingent paid part-time sweepers. Even it is not the case on behalf of the respondents that their appointment was done after following due procedure of selection and to that extent, it cannot be said that their appointments were irregular. As such, in the absence of any sanctioned posts in the Post Office in which the respondents were working, there was no question of appointing the respondents after following due procedure. In light of the above, the directions issued by the High Court in the impugned judgment and order are required to be considered.*



13. The observations made in para 9 are on surmises and conjectures. Even the observations made that they have worked continuously and for the whole day are also without any basis and for which there is no supporting evidence. *In any case, the fact remains that the respondents served as part-time employees and were contingent paid staff. As observed above, there are no sanctioned posts in the Post Office in which the respondents were working, therefore, the directions issued by the High Court in the impugned judgment and order are not permissible in the judicial review under Article 226 of the Constitution. The High Court cannot, in exercise of the power under Article 226, issue a mandamus to direct the Department to sanction and create the posts.* The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularisation policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. *Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue mandamus and/or direct to create and sanction the posts.*

14. Even the regularisation policy to regularise the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue mandamus and/or issue mandatory directions to do so. In **R.S. Bhonde**⁷¹, it is observed and held by this Court that *the status of permanency cannot be granted when there is no post*. It is further observed that *mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularisation is done*.

16. Thus, as per the law laid down by this Court in the aforesaid decisions *part-time employees are not entitled to seek regularisation as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work.*

⁷¹ State of Maharashtra v R.S Bhonde (2005) 6 SCC 751



17. Applying the law laid down by this Court in the aforesaid decisions, the directions issued by the High Court in the impugned judgment and order more particularly, directions in paras 22 and 23 are unsustainable and beyond the power of the judicial review of the High Court in exercise of the power under Article 226 of the Constitution. Even otherwise, it is required to be noted that in the present case, the Union of India/Department subsequently came out with a regularisation policy dated 30-6-2014, which is absolutely in consonance with the law laid down by this Court in *Umadevi*, which does not apply to the part-time workers who do not work on the sanctioned post. As per the settled preposition of law, the regularisation can be only as per the regularisation policy declared by the State/Government and nobody can claim the regularisation as a matter of right dehors the regularisation policy. Therefore, in absence of any sanctioned post and considering the fact that the respondents were serving as a contingent paid part-time Safai Karamcharies, even otherwise, they were not entitled for the benefit of regularisation under the regularisation policy dated 30-6-2014.”

34.8.2 Thus, in *Ilmo Devi*,

- (i) the respondents before the Supreme Court were only part time sweepers, who were working for less than five hours a day,
- (ii) the work was seasonal, as and when available,
- (iii) they were paid from the contingency fund,
- (iv) there was no evidence that the respondents were working continuously, and
- (v) the appointment of the respondents was not preceded by any due process of selection, as would justify treating the appointments as merely “irregular” at best, and
- (vi) most importantly, there were no sanctioned posts against which the respondents could be regularized.

34.8.3 As against that, in the present case,

- (i) the applicants have rendered continuous and uninterrupted service for the MCD for decades except, in some



- cases, for temporary summer vacation breaks,
- (ii) they are working as teachers, so that their work is perennial and their need continuous,
 - (iii) they were appointed against sanctioned posts,
 - (iv) they were appointed after a due process of selection, following an advertisement, which required the applicants to possess all essential qualifications for the post, and satisfy the age stipulations, and
 - (v) they are directly employed under the MCD and are under their supervision.

34.8.4 In view of these facts, there is no comparison between the decision in *Ilmo Devi* and the present facts. Rather, if one reads the extracted passages from *Ilmo Devi*, it would appear that the fact that the applicants before us have been appointed against sanctioned posts, following a due selection and in accordance with the prescribed recruitment qualifications, would confer on them a right to seek regularisation.

34.9 Malook Singh

34.9.1 The dispute in *Malook Singh* was essentially one of seniority. Malook Singh etc. were appointed as clerks on *ad hoc* basis in 1975-1976. They were regularized on 1 April 1977. The regularization Policy, in accordance with which they were regularized, provided that the regularized *ad hoc* clerks would rank senior to those who would subsequently be appointed by regular selection, but that, among



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themselves *inter se*, their seniority would be dependent on the date of initial *ad hoc* appointment.

34.9.2 Malook Singh etc. instituted a writ petition, before the High Court of Punjab & Haryana, claiming seniority over regularly recruited clerks appointed after them. The claim was allowed by a learned Single Judge, *vide* judgment dated 6 December 1991. In appeal, the Division Bench, while upholding the decision of the learned Single Judge to the effect that Malook Singh etc. would rank senior to clerks recruited later, left the question of whether their regular service would be entitled to be reckoned from the date of the initial *ad hoc* appointments open. SLP, preferred against the decision of the Division Bench, was also dismissed by the Supreme Court.

34.9.3 In the interregnum, the seniority list was redrawn and finalised by Office Order dated 14 January 1994, in which Malook Singh etc. were granted seniority with effect from the dates of their initial appointment, treating the entire period of *ad hoc* service rendered by them as regular. This decision was challenged, before the High Court, by way of a fresh batch of writ petitions. The petitioner is asserted that they had not been heard before seniority had been granted to Malook Singh etc. from the date of their initial *ad hoc* appointment and that the judgment dated 6 December 1991 would not buying them, as they were not made parties thereto.

34.9.4 These writ petitions came to be allowed by a learned Single Judge by order dated 5 January 2011. The learned Single Judge was of



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the view that the judgment dated 6 December 1991 had been overruled by a Division Bench of the High Court in *Gurmair Singh v State of Punjab*⁷². The learned Single Judge further noted the fact that, in the LPA preferred against the judgement dated 6 December 1991, the Division Bench had left the issue of whether Malook Singh etc. would be entitled to reckon their seniority as clerk with effect from the date of their initial ad hoc appointment, open. The learned Single Judge, following these observations, concluded that it was a well-settled principle that ad hoc service would not count towards seniority, where the initial appointment was made without following due procedure. LPAs, preferred against the judgment of the learned Single Judge, were dismissed by the Division Bench of the High Court on 15 March 2011, against which SLPs were preferred before the Supreme Court, which came to be decided by the judgment under discussion.

34.9.5 The Supreme Court entirely agreed with the view expressed by the Division Bench, upholding the decision dated 5 January 2011 of the learned Single Judge, that the issue of whether Malook Singh etc were entitled to reckon their seniority as clerks with effect from the date of their initial ad hoc appointment had been left open by the Division Bench in its judgment dated 4 January 1993. In law, the Supreme Court observed that it was well-settled that ad hoc appointment, made as a pure stopgap arrangement and not in accordance with the rules, could not count towards seniority, for which purpose the Supreme Court relied on the well-known judgment of the Constitution Bench in *Direct Recruit Class II Engineering*

⁷² Order dated 21 July 1994 in CWP 9200/1993



Officers Assn. v State of Maharashtra⁷³. What is more important, however, is the reasoning, contained in para 25 of the report, while applying the law declared in ***Direct Recruits***:

“25. The Notification dated 3-5-1977 stated that *the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the agencies concerned*. In this regard, the vacancies were notified to the employment exchange or advertisements were issued, as the case may be, by appointing authorities. *The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board*. However, subsequently a policy decision was made to regularise the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, *the initial appointment was supposed to be a stopgap arrangement, besides being not in accordance with the rules*, and the ad hoc service cannot be counted for the purpose of seniority.”

(Emphasis supplied)

Thus, on the facts before it, where the Notification dated 3 May 1977, regularising the services of Malook Singh etc, specifically stated that their ad hoc appointments had been made only in administrative interest, on account of the delay which took place in making regular appointments through the concerned agencies, which took place after notification by the employment exchange and issuance of advertisements, seen with the fact that the appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board, the Supreme Court treated the initial appointment of Malook Singh etc as not having been made in accordance with the Roots, thereby attracting the law enunciated in ***Direct Recruits***.

34.9.6No occasion arises, in the present case, for applying the law

⁷³ (1990) 2 SCC 715, referred to, hereinafter, as “***Direct Recruits***”



declared in *Malook Singh*. There is no claim to seniority, preferred by anyone against, or reasonably, the applicants. If, and as and when any such claim of seniority is preferred, it would be for the Court, on that occasion, to examine whether the principal in *Direct Recruits*, as in both by the Supreme Court in *Malook Singh* would, or would not, apply on facts.

34.9.7 The decision in the *Malook Singh*, therefore, does not particularly affect the merits of the petitions before us.

35. The sequitur

35.1 As a result the judgments cited by Ms. Chatterjee do not detract, in any way, from the effect, on the facts before us, of the decisions in *Jaggo* and *Shripal* and to an extent in *Velajagan*.

35.2 To reiterate, inasmuch as

- (i) the applicants had been appointed pursuant to an advertisement duly published in the newspapers,
- (ii) the advertisement required candidates to possess all requisite qualifications prescribed for the posts in question,
- (iii) the candidates were also required to fulfil the necessary age stipulations,
- (iv) the candidate were subjected to an open selection process,
- (v) the appointments were against duly sanctioned posts,
- (vi) the applicants had continued in service for several years –



in fact for decades – without any complaint at any point of time,
(vii) the service was uninterrupted and continuous except for small breaks during summer vacations,
(viii) the nature of the work undertaken by the applicants were perennial and part of the unalienable sovereign functions of the Municipal Corporations, and
(ix) there was no distinction between the nature of the work undertaken by the applicants and that undertaken by other “regularly appointed” teachers,
the applicants cannot be denied the benefit of the decisions in *Jaggo* and *Shripal*.

36. The precedential impact of *Jaggo* and *Shripal*, vis-à-vis earlier decisions

36.1 Before concluding, we may advert to an aspect of the matter to which we have referred in para 22 *supra*. A question which arose for consideration was whether, once *Uma Devi* have been noticed in *Jaggo*, it was open for this Court to take a view that there were certain aspects of *Uma Devi* with which *Jaggo* was at variance and, on that ground, follow *Uma Devi* with respect to those aspects.

36.2 To our mind, this is completely impermissible. Once the two Judge Bench of the Supreme Court in *Jaggo* has noticed the decision in *Uma Devi*, there is an irrebuttable presumption that the learned Judges who decided *Jaggo* were aware of the decision in *Uma Devi* in its entirety. If this Court were to adopt a view that there are aspects in



Uma Devi which have not been noticed in *Jaggo*, it would amount to this Court holding that the learned Judges who decided *Jaggo* had not entirely perused the decision in *Uma Devi*, though they relied upon it. It would not only be impermissible, but grossly improper for this Court to adopt any such view.

36.3 Equally, once the decision in *Jaggo* is before us, it is not permissible for us to ignore any of the principles contained in the said decision by relaying on *Uma Devi*, adopting the view that there is any conflict between the two.

36.4 The matter might have been different if *Uma Devi* had not been noticed in *Jaggo*. Once it is noticed, this Court, as a Court hierarchically lower in the precedential ladder to the Supreme Court, has to abide by the understanding of *Uma Devi*, as contained in *Jaggo* and *Shripal*.

37. What exactly *Jaggo* says

37.1 Besides, it is important that the actual nature of the decision in *Jaggo* is understood. *Jaggo* did not depart from *Uma Devi*. Nor does *Jaggo* dilute any of the principles contained in *Uma Devi*. *Jaggo* merely explains *Uma Devi*. The Supreme Court, in *Jaggo*, has merely clarified that *Uma Devi* was intended to cater to a particular kind of situation, and applying *Uma Devi* in any other situation would be incorrect. This view found expression, earlier in point of time, in the decisions in *Official Liquidator* and *Ilmo Devi*, on which Ms.



Chatterjee herself placed reliance.

37.2 We have ourselves examined the decision in *Uma Devi*. A holistic reading of the judgment in *Uma Devi* makes it clear that it was intended to cater to back door appointments, made in violation of constitutional scheme, without any open selection, which were fundamentally illegal in nature. *Uma Devi* does not, at any point, hold that employees who were duly qualified as per existing rules, who had been appointed after responding to a regularly published advertisement and had been subject to a regular selection process, and who were appointed against posts which were duly sanctioned, had no right to regularisation against the posts even if they had served on the posts for decades, without any blemish. *Jaggo* has merely clarified this position.

37.3 Towards the conclusion of hearing, Ms. Chatterjee also sought to rely on a tabular statement, which sought to identify certain propositions, from *Uma Devi*, with which, according to her, *Jaggo* was at variance. We do not deem it necessary to advert to the said chart in detail, for the simple reason that it suffers from the basic error in understanding and applying *Uma Devi*, which *Jaggo* emphasised. To reiterate, the propositions in *Uma Devi*, including the proposition that continuous ad hoc or contractual service would not give a right to regularisation have to be understood as having been rendered in the backdrop of the malaise that *Uma Devi* sought to remedy, and not as absolute propositions, irrespective of the facts before the Court.



37.4 At the cost of reiteration, we deem it appropriate to once again state that *Uma Devi* does not hold, at any point of the judgment, that employees who satisfied the stipulated educational and experience qualifications and age requirement, who applied in response to an open advertisement, and who were subjected to a regular selection process in which all applicants were dispassionately evaluated, and who continued for several years, or decades, without complaint, against posts which were sanctioned, have no right to seek regularisation, and can be terminated at any point of time. *Jaggo* holds that the manner in which *Uma Devi* has been interpreted and applied over the course of time has resulted in weaponization of the judgment. In our view, accepting the stand that the MCD seeks to canvas in these petitions, would not only weaponize, but would in fact demonize, *Uma Devi*.

38. The question of pay

38.1 Ms. Chatterjee also sought to submit that, as contract employees, the applicants cannot claim entitlement to the scales of pay drawn by regular employees performing the same jobs.

38.2 We are unable to accept the submission.

38.3 *Jaggo*, in para 25, provides a complete answer to the contention and, at the cost of repetition, we again extract the relevant portion thereof:



“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 labelled 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.”*

38.4 Upholding the submission of Ms. Chatterjee, and denying, to the applicants, the pay being drawn by others performing the same duties albeit after regular selection, would amount, in our view, to the Court doing exactly what the Supreme Court has deprecated, when done by the executive.

38.5 We may note, here, that Ms. Chatterjee did not, at any point of time, seek to contend that the nature of duties performed by the applicants was in any way different from the duties performed by regularly employed persons holding the same posts.

Conclusion

39. For the aforesaid reasons, we are of the opinion that the applicants were entitled to regularization in the posts to which they were initially appointed on contract basis, from the date of such appointment, as well as to the same financial benefits and emoluments as were available to regular employees performing the same work.



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40. Resultantly,

- (i) the judgments dated 30 September 2019 rendered by the Tribunal in OA 2482/2019, OA 2387/2019 and OA 2483/2019 and judgment dated 13 March 2021 rendered in OA 3540/2019, are quashed and set aside,
- (ii) OA 2482/2019, OA 2387/2019, OA 2483/2019, OA 3540/2019 shall stand allowed in terms of the prayers contained therein,
- (iii) WP (C) 11693/2019, WP (C) 11694/2019, WP (C) 11695/2019 and WP (C) 7915/2023 shall also stand allowed accordingly,
- (iv) judgment dated 4 April 2024, rendered by the Tribunal in OA 2525/2023 is affirmed in its entirety, and
- (v) WP (C) 8501/2024 stands dismissed accordingly.

41. There shall be no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 16, 2025/aky/dsn

Click here to check corrigendum, if any