IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25749 of 2013

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Vijay Ram S/O Sri Sadhu Ram R/O Mohallah Barah Patthar Dehri-On-Sone, P.O. and P.S. Dehri-On-Sone, District Rohtas.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Water Resources Development Department, Govt. Of Bihar, Patna.
3. The Chief Engineer East Sone Canal Division, Aurangabad.
4. The Superintending Engineer, East Sone Canal Circle, Aurangabad, Aurangabad.
5. The Executive Engineer, East Sone Canal Division, Aurangabad.
6. The District Magistrate, Aurangabad.
7. The District Magistrate, Aurangabad-Cum-The Chairman, Appointment Committee For Appointment On The

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashutosh Singh, Advocate
For the Respondent/s	:	Mr. K.P. Gupta, GP-10
	:	Mr. Virendra Kumar, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT
Date : 16-06-2026

Heard the parties.

2. The present writ petition has been filed for the following reliefs:-

> "*a. For directing the respondent authorities to regularize the service of the petitioner on the basis of the period i.e. 26 years rendered in service as a daily wage on a Class IV post.*
>
> *b. For directing the respondent authorities to take a decision with respect to the regularization of the service of the petitioner on Class IV (Group GHA) post in the light of*

the Govt. policy issued with respect the daily wages employees.

c. *For directing the respondent authorities to absorb the petitioner on any Class IV post in any organization of the state govt."*

BRIEF FACTS

3. The brief facts, which are essential for adjudication of the present writ petition are that the petitioner was engaged to work on daily wage basis by the Chief Engineer, East Sone Canal Division, Aurangabad vide letter No. 23 dated 15.09.1983 in the Office of East Sone Upper Layer Division, Barun, Aurangabad. As per the school leaving certificate given by the petitioner, his date of birth has been mentioned as 15.08.1968. The petitioner was placed to work as Chaukidar at Main Canal Point vide Letter No. 272 dated 19.05.1986, issued under the signature of the Sub-Divisional Officer, Barun, Aurangabad for the purposes of controlling the canal's water and also to maintain the law and order during the time of kharif irrigation. From time to time, letter of appreciation was issued in favour of the petitioner with regard to his satisfactory work and he was also granted bonus, along with others to the tune of Rs. 150/- for the year 1987-88. Subsequently, the petitioner and two others were directed to work as night chaukidar in Barun colony vide memo No. 994 dated 27.04.1989,

issued under the signature of the Executive Engineer, East Sone Upper Canal Division, Aurangabad. The name of the petitioner and 18 others was recommended for absorption by the Chief Engineer, Water Resource Department, Aurangabad as per the list submitted by the Superintending Engineer, Sone Upper Level Canal Division, Aurangabad vide letter No. 1563 dated 28.11.1991, to the Joint Secretary, Water Resource Department. Vide resolution dated 16.03.2006, the State Government in consultation with different employees unions, extended the cutoff date for regularization of the work charge employees from 01.08.1985 to 11.12.1990, for giving priorities in appointment in Class-IV posts.

4. It is the case of the petitioner that despite rendering uninterrupted and unblemished service, which is perennial in nature, the petitioner rendered 26 years of the prime of his life without being regularized by the respondent authorities. When the case of the petitioner was not considered for regularization, in terms of the resolution of the State Government dated 16.03.2006 and letter dated 01.04.2006, vide letter No. 1219 dated 07.05.2006, issued under the signature of the Chief Engineer, Water Resource Department, Aurangabad, a request was made to the Superintending Engineer, Aurangabad to send the relevant information with respect to petitioner and others for absorption of

their services. Subsequently, a meeting was held on 16.06.2008, under the Chairmanship of the Collector, Aurangabad by the Committee, which was constituted for absorption through appointment with regard to daily wage employees of Group-IV (Gha) and have taken decision with respect the available 18 persons. The name of the petitioner was placed at serial no. 18 in the said list, however in column no. 6, a remark was made that the petitioner has been engaged at the time, when his age was 15 years and only after getting clarification, his case will be considered. Subsequently, in view of letter No. 96 dated 23.06.2008, issued under the signature of the Collector, Aurangabad, the Executive Engineer, Sone High Level Canal Division, Aurangabad vide his letter No. 1029 dated 23.07.2008, recommended the name of the petitioner for regularization of his services. Vide letter No. 914 dated 28.08.2009, issued under the signature of the Executive Engineer, Sone High Level Canal Division, Aurangabad, addressed to the Chief Engineer, Water Resources Department, Aurangabad it was informed that the petitioner is continuously performing his duties and he was found on duty at the time of inspection by the higher authorities. The Executive Engineer recommended the case of the petitioner for his regularization. The petitioner kept on filing representation before the respondent authorities for consideration of his case, but no action has been taken. It is further case of the petitioner that similarly situated 18 persons have already been regularized by the authorities, however the petitioner has been left out, on the ground that on the date his engagement, he was a minor aged about 15 years.

SUBMISSION ON BEHALF OF THE PETITIONER

5. The learned counsel for the petitioner submits that the petitioner was engaged to work as a daily wage employee in 1983 and as per his date of birth, which is 15.08.1968, he was 15 years at the time of his engagement. Despite recommendation made by the concerned authorities, his case has not been considered for regularization only on the ground, since at the time of his engagement, he was a minor. He further submits that several similarly situated persons, namely, Narayan Yadav, Bindeshwari Singh, Nand Kumar, Madan Yadav and Panchan Yadav were also minor at the time of their engagement, however they have been regularized in service by the respondent authorities and the petitioner has been left out, on the ground that on the date of his engagement, he was a minor. He submits that when the case of the petitioner for his regularisation was not considered, despite the fact that he was working since 1983 and similarly situated persons have been regularised, he has filed a present writ petition.

SUBMISSION ON BEHALF OF THE RESPONDENTS

6. Per contra, the learned counsel appearing on behalf of the State submits that the petitioner fulfills all the conditions mentioned in the direction for appointment. His appointment was recommended by the department, but at the time of meeting, it was not considered, since according to the official records, he was engaged to work as a daily wage employee, when he was 15 years of age. Later on, an affidavit was filed by his father to the effect that he was not underage at the time of appointment and due to conflict of his age, he was not appointed. He further submits that according to the directions of the Government, his age was to be confirmed by the Medical Board, which has not been received, therefore, no decision has been taken by the respondent-State on the case of the petitioner for his regularization. The learned counsel for the State further submits that the decision with regard to appointment/regularization of the petitioner was postponed for want of his certificate of age by the Medical Board and the same is still lacking. He further submits that despite the petitioner fulfilling all the eligibility criteria, his case has not been considered, since at the time of initial engagement, he was found to be under age i.e. he was aged about 15 years.

CASE LAW RELIED ON BEHALF OF THE PETITIONER

7. The learned counsel appearing on behalf of the petitioner in support of his contention refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in ***2025 SCC OnLine SC 1735 (Dharam Singh & Ors. Versus State of U.P. & Anr.)***, wherein the Hon'ble Supreme Court of India, while considering the case of regularization of daily wagers/Ad-hoc employees, in paragraph nos. 9, 11, 13, 15, 17, 18 and 19 has held as follows:-

> *"9. Moreover, it is undisputed that the nature of work performed by the appellants, i.e. sorting and scrutiny of applications, dispatch and office support, and driving, has been continuous and integral to the Commission's functioning since their engagement between 1989 and 1992. The Commission itself moved for sanction of fourteen posts and furnished a list of fourteen daily wagers including the appellants. That consistent internal demand, coupled with uninterrupted utilisation of the appellants' labour on regular office hours, fortifies the conclusion that the duties are perennial. To continue extracting such work for decades while pleading want of sanctioned strength is a position that cannot be sustained.*
>
> *11. Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non-suit the appellants is misplaced. Unlike Umadevi (Supra), the*

challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in Jaggo v. Union of India[4] *and in Shripal v. Nagar Nigam, Ghaziabad*[5] *have emphatically cautioned that Umadevi (Supra) cannot be deployed as a shield to justify exploitation through long-term "ad hocism", the use of outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from Shripal (supra) have been reproduced hereunder:*

"14. The Respondent Employer places reliance on Umadevi (supra)[2] *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 India3 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."*"

13. As we have observed in both Jaggo (Supra) and Shripal (Supra), outsourcing cannot become a convenient shield to perpetuate precariousness and to sidestep fair engagement practices where the work is inherently perennial. The Commission's further contention that the appellants are not "full-time" employees but continue only by virtue of interim orders also does not advance their case. That interim protection was granted precisely because of the long history of engagement and the pendency of the challenge to the State's refusals. It neither creates rights that did not exist nor erases entitlements that may arise upon a proper adjudication of the legality of those refusals.

15. Therefore, in view of the foregoing observations, the impugned order of the High Court cannot be sustained. The State's refusals dated 11.11.1999 and 25.11.2003, in so far as they concern the Commission's *proposals for sanction/creation of Class-III/Class-IV posts to address perennial ministerial/attendant work, are held unsustainable and stand quashed.*

17. *Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.*

18. *Moreover, it must necessarily be noted that "ad-hocism" thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If "constraint" is invoked, the record should show what alternatives*

were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

19. Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the material indicating vacancies and comparator regularisations, we issue the following directions:

i. Regularization and creation of Supernumerary posts: All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and *the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.*

ii. Financial consequences and arrears: Each appellant shall be paid as arrears the full difference between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization/retirement/death, as the case may be. Amounts already paid under previous interim directions shall be so adjusted. The net arrears shall be released within three months and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.

iii. Retired appellants: Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgment.

iv. Deceased appellants: In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the *arrears under clause (ii) up to the date of death, together with all terminal/retiral dues recalculated consistently with clause (i), within three months of this Judgment.*

v. Compliance affidavit: The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary of the U.P. Education Services Selection Commission or the prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgment."

8. The learned counsel for the petitioner further refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in ***2026 LiveLaw (SC) 95*** passed in ***SLP(CIVIL) No. 30762 of 2024 (Bhola Nath versus The State of Jharkhand & Ors.)***, wherein the Hon'ble Supreme Court of India in paragraph nos. 9.3, 10, 11, 12, 13 and 14 has held as follows:-

"9.3. In the present case, the respondent-State has engaged the services of the appellants for a period exceeding 10 years. Upon completion of this long tenure, the respondents, as apprehended by the appellants, declined to grant any further extension on the ground that the engagement was contractual in nature. Such a decision necessarily warrants examination on the touchstone of the equality principles enshrined in the Constitution, which obligate the State to act as a model employer and to take decisions free from

arbitrariness. In our consideration of the second issue, we shall examine whether non-interference with the impugned judgments would result in substantial and grave injustice to the appellants.

ISSUE II. Whether the action/inaction of the respondent-State in not recognizing the appellants' continuous service for the purpose of regularization is arbitrary and violative of Article 14 of the Constitution of India?

10. The learned Single Judge, vide common order, dismissed the writ petitions filed by the appellants seeking a writ of mandamus directing the respondentState to regularize their services. In doing so, the writ Court placed reliance on the terms and conditions of the employment agreement entered into between the appellants and the respondents. The learned Single Judge, in this regard, recorded the following findings: -

i. The appellants were appointed on a purely contractual basis pursuant to a decision of the Finance Department to fill 22 sanctioned posts through contractual engagement, the expenditure being met from non-plan funds. Following issuance of an advertisement and completion of the selection process, the appellants were appointed by entering into contracts of employment for an initial period of one year, extendable from time to time for fixed durations.

ii. The appellants were granted extensions periodically, with the last extensions having been issued in the year 2023 as a one-time measure. The respondent-State treated the said decision as a conscious policy determination, which, according to the learned Single Judge, did not warrant interference by the Court.

iii. The appellants were held not entitled to regularization under the regularization scheme framed by the respondent-State in the year 2015, as modified in 2019, which prescribed completion of ten years of continuous service as on the cut-off year 2019. It was further noted that the appellants had not laid any challenge to the validity of the said regularization scheme.

iv. Since the appellants were appointed on a contractual basis and continued only through periodic extensions, it was held that they did not possess any statutory or legal right to continue in service once the contractual period, including its extensions, came to an end.

v. Emphasis was laid on the fact that the appellants were fully aware, and were put to notice on each occasion of renewal, that their engagement was contractual and limited to a specified tenure. In view thereof, the learned Single Judge held that no question of legitimate expectation or enforceable right to renewal or regularization could arise, nor could any *right be said to have crystallised in their favour. vi. It was further noted that the appellants had not been replaced by another set of contractual employees. On the contrary, the material on record indicated that the respondent-State had undertaken regular recruitment and appointed nine persons as regular employees through a fresh advertisement.*

11. At the outset, we find it necessary to express our disapproval of the manner in which the High Court has approached the present lis. The controversy before the Court was not one of mere acquiescence or implied waiver of rights. The High Court, in our view, has proceeded on a mechanical application of precedents without engaging with the core constitutional issues involved, thereby reducing the dispute to one of acceptance of contractual terms, divorced from its larger constitutional context.

12. In ***Central Inland Water Transport Corpn. v. Brojo Nath Ganguly,***[6] *this Court acknowledged the increasing imbalance in the bargaining power of contracting parties. The Court held thus: -*

"89. . . . We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. ***Article 14 of the Constitution guarantees to all persons equality before the***

law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard

form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. *This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."*

(emphasis laid)

Therefore, the Court has held that the Constitution obliges courts to advance social and economic justice and to give effect to the equality mandate under Article 14. Consequently, courts will neither enforce nor hesitate to invalidate contracts, or contractual clauses, that are unfair or unreasonable when entered into between parties with unequal bargaining power.

13. Another facet requiring consideration in the case of contractual employees, such as the present appellants, is the doctrine of legitimate expectation. Where employees have continued to discharge their duties on contractual posts for a considerable length of time, as in the present case, it is but natural that a legitimate expectation arises that the State would, at some stage, recognize their long and continuous service. It is in this belief, bolstered by repeated extensions granted by the Executive, that such employees continue in service and refrain from seeking alternative employment, notwithstanding the contractual nature of their engagement. At this juncture, it is thus apposite to advert to the principles governing the doctrine of legitimate expectation as enunciated by this Court in ***Army Welfare Education Society v. Sunil Kumar Sharma,***[8] *wherein it was held as follows: -*

"63. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:

63.1. First, ***legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;***

63.2. Secondly, ***legitimate expectation must arise either from an express or implied promise;*** *or a consistent past practice or custom followed by an authority in its dealings;*

. . .

63.5. Fifthly, ***legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.*** *. . .*

64. ***The aforesaid features, although not exhaustive in nature, are sufficient to help us in deciding the applicability of the doctrine of legitimate expectation to the facts of the case at hand. It is clear that legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in State action.*** *It does not extend to and cannot govern the operation of contracts between private parties, wherein the doctrine of promissory estoppel holds the field."*

(emphasis laid)

It is, therefore, not difficult to comprehend the expectation with which such contractual employees continue in the service of the State. The repeated conduct of the employer-State in expressing confidence in their performance and consistently granting monetary upgrades & tenure extensions reasonably nurtures an expectation that their long and continuous service would receive further recognition.

14. In light of our discussion, in the foregoing paragraphs, we summarize our conclusions as follows:

I. The respondent-State was not justified in continuing the appellants on sanctioned vacant posts for over a decade under the nomenclature of contractual engagement and thereafter denying them consideration for regularization.

II. Abrupt discontinuance of such long-standing engagement solely on the basis of contractual nomenclature, without either recording cogent reasons or passing a speaking order, is manifestly arbitrary and violative of Article 14 of the Constitution.

III. Contractual stipulations purporting to bar claims for regularization cannot override constitutional guarantees. Acceptance of contractual terms does not amount to waiver of fundamental rights, and contractual stipulations cannot immunize arbitrary State action from constitutional scrutiny.

IV. The State, as a model employer, cannot rely on contractual labels or mechanical application of Umadevi (supra) to justify prolonged ad-hocism or to discard long-serving employees in a manner inconsistent with fairness, dignity and constitutional governance.

V. In view of the foregoing discussion, we direct the respondent-State to forthwith regularize the services of all the appellants against the sanctioned posts to which they were initially appointed. The appellants shall be entitled to all consequential service benefits accruing from the date of this judgment."

9. The learned counsel for the petitioner further refers to and relies upon a judgment of the Hon'ble Supreme Court of India passed in ***Civil Appeal No. 8354-8356 of 2026 arising out of SLP(C) Nos. 28802-28804 of 2019 (Bhikhani Devi & Etc. versus Union of India & Ors.),*** wherein in paragraph no. 76 the Hon'ble Supreme Court of India has held that "a temporary status casual labourer would be entitled to pensionary benefits on superannuation even in the absence of regularization."

CONSIDERATION AND ANALYSIS

10. Having heard the rival submission and after going through the records, it is apparent that the petitioner was appointed as a daily wager in 1983 and he continued to work on the said post till filing of the writ petition. Further, it has been informed at the bar that the petitioner is still working and performing his duties to the satisfaction of the respondent authorities. It is not in dispute that the petitioner fulfills all the requisite qualifications for being regularized in services of the respondent authorities and the respondent authorities in their counter affidavit have made a categorical statement to that effect. The only ground, on which the case of the petitioner has not been considered, is that on the date of his engagement as a daily wager, he was 15 years of age. It has already been settled by the Hon'ble Full Bench of this Court in a

case reported in ***2006 (1) PLJR 410 (Ragjawa Narayan Mishra versus the Chief Executive Officer, Bihar Rajya Khadi Gramoudyog Board & Ors.)***, wherein in paragraph nos. 13, 15, 16, 17 and 18, it has been held as follows:-

> *"**13.** The plain perusal of the aforesaid statutory provision would, undoubtedly, go to suggest that the Government by virtue of an amendment by addition Rule 5 in Appendix-5 in the Bihar Pension Rules which came into effect, on 23.8.1950, long before the petitioners came to be admitted in the service of the Board and it is very clear there from that the qualifying age of the Government servants for consideration of the pensionary benefits came to be raised from 16 years to 18 in the Government service. Otherwise, also, the aforesaid circular of 1998 has a purpose and policy behind it. It is clarificatory. There is no dispute about the fact that the service between the employer and the employees is a matter of contract. Once, a person is validly entered into the service of the Government he is offered the contractual and statutory protection and the initial entry in the service always is the outcome of the contractual relationship. Who would be competent to contract? It has been provided in Section 11 of the Indian Contract Act, 1872, as to who is the competent to contract. Section 11 of the said Act reads herein as under:*

Who are competent to contract.— Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

15. *It leaves no any manner of doubt that in this country the age of majority of a person, domiciled in India, has been on his attaining the age of eighteen years and not before. Of course, it would be not very material at this stage to consider that in computing the age of a person, the day on which he borns is to be included as a whole day.*

16. *Be that as it may, one thing is certain that admittedly both the petitioners when they entered into the contract with the respondent Board they had not attained the age of majority. Apart from its legal impact and effect, the ramifications and end result on the status of a contract in terms of the service relationship, a person could be said to have entered into a valid service, only, when he has attained the age of majority. So the minimum age prescribed at the entry point in the Government service has been 18 years. The maximum age prescribed for the exit point is 58 years. In other words, the total length of period of Government service in any case for pensionary benefits would not exceed 40 years. It is in this context, the Government Circular mentioned herein* *above needs to be considered. When there is a clear Rule provision anything contrary to or inconsistent with or incompatible to it, any circular or resolution or order, will not have any legal and valid effect to abridge the right enshrined in the Rule Provision. Even if the said circular of 1998 as relied upon by the petitioners is considered to be beneficial to them then, also, it cannot be read at this juncture with the existing statutory provision incorporated in the Bihar Pension Rules, as well as, the Bihar Service Code. Therefore, from that point of view also the petitioners cannot be allowed to contend that they have right to continue even beyond the age of 58 years though provided in Rule 73 of the Bihar Service Code which prescribes the superannuation age of 58 years.*

17. *Thirdly, it is settled and established proposition of law and principles of jurisprudence that a person who takes undue advantage by one or other reasons at the entry point in the service cannot be allowed to urge that he be given higher benefit and if it is urged then, clearly, it goes to show that something wrong or irregular has been done, at the entry point, in service. So the settled principle, also, creates a very strong impediment in getting the relief from this Court which is exercising extraordinary, prerogative, equitable and discretionary writ* *jurisdiction by invocation of the provision of Article 226 of the Constitution of India.*

18. *In our opinion, therefore, the impugned orders questioned in both the writ petitions, obviously, cannot be interfered with from any point of view as discussed hereinabove. The proposition of law, therefore, is made evident and unambiguous that the superannuation age prescribed in Rule 73 of the Bihar Service Code will apply for retirement purpose and a person cannot be continued beyond the age of completion of 40 years in service. It is, therefore, evidently, clear that a Government servant who has completed 40 years of service or has attained the age of 58 years has to be superannuated in terms of the existing Rule provision. Our answer, therefore, is very clear and we answer this reference accordingly. The contradictory view in the aforesaid decisions referred to hereinbefore, shall not be a good law."*

11. From the Hon'ble Full Bench decision of this Court in the case of ***Ragjawa Narayan Mishra (supra)***, it would transpire that if a person is appointed, while he was a minor, his services shall be counted till he attains the age of 60/62 years or maximum 42/44 years, in case of Class-III/ Class-IV employees. In the present case, since the petitioner has been appointed in 1983 and as per the date of birth, which has been mentioned by the

petitioner in the writ petition i.e., 15.08.1968, he was 15 years of age at the time of his appointment. Therefore at best, the respondent authorities could have done, to have directed the petitioner to superannuate from service on completion of 42 years of service i.e. the maximum period which an employee can serve, assuming the date of employment as 18 years of age. In case of the petitioner, since he was appointed on 15.09.1983, the respondent authorities could have retired him from service on completion of 42 years of age i.e. 15.09.2025. Further, the Hon'ble Supreme Court of India in the case of ***Bhola Nath (supra)*** *a*nd ***Dharam Singh (supra)*** has categorically held that if the person is engaged after following all the due process of law and is performing the work/duties, which are perennial in nature and which is same, as being performed by a regular employee, then in that case, considering the long tenure of engagement, he is liable to be regularized in service. In the present case, the respondent authorities have not contradicted the fact that the petitioner is not eligible to be appointed/regularized in service. The only ground, which has been taken to deny the regularization to the petitioner, is that at the time of his engagement as a daily wage employee, he was 15 years of age and was treated to be a minor. Further, in a recent judgment in the case of Bhikhani Devi & Etc. (supra), the

Hon’ble Supreme Court of India allowed the writ petition by holding that a temporary status casual labourer would be entitled to pensionary benefits on superannuation, even in the absence of regularization.

12. Considering the facts stated above and on the basis of the law laid down by the Hon’ble Supreme Court of India in the case of ***Dharam Singh (Supra)*** & ***Bhola Nath (Supra)***, this Court is of the considered opinion that the petitioner is entitled to be regularized in service w.e.f 15.09.1983 i.e. the date on which the order of appointment was issued. The petitioner is entitled for all the service related benefits, since it is not in dispute that he has not worked for the said period. However, the arrears payable to the petitioner shall remain continued to the period of three years, preceeding the date of filing of the present writ petition before this Court, in view of paragraph no.82 of the judgment of the Hon’ble Supreme Court of India in the case of ***Bhikhani Devi & Etc. (supra)***. He would be entitled for all the service related benefits treating his date of regularization as 15.09.1983 and the entire period from 15.09.1983 till the date of his retirement will be counter for the purposes of granting pension and pensionary benefits. Since, the petitioner has completed 42 years of service on 15.09.2025, which an employee can maximum serve, in view of

the decision of the Hon’ble Full Bench of this Court in the case of ***Ragjawa Narayan Mishra (supra)***, he will be entitled for pension and pensionary benefits w.e.f the date of his superannuation.

13. The respondent authorities are directed to take steps for regularization of the services of the petitioner in terms of the directions given hereinabove and in terms of the decision of the Hon’ble Supreme Court of India in the case of ***Dharam Singh (Supra)*** & ***Bhola Nath (Supra)*** and to take steps for making payment of arrears of salary, as indicated above and the pension and pensionary benefits.

14. The entire exercise in this regard must be completed within a period of four months from the date of receipt/production of a copy of the order.

15. The writ petition is allowed.

16. Pending applications, if any, shall also stands disposed of.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	18.06.2026
Transmission Date	NA