IN THE HIGH COURT OF ORISSA AT CUTTACK
WP(C) No.11092 of 2025

Prafulla Kumar Bhoi ..... ***Petitioner***

Represented by Adv. - Sisir Das

-versus-

State of Odisha & Ors. ..... ***Opposite Parties***

Represented by Adv. -Mr. S.K.Parhi, A.S.C.

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

Date of hearing: 21.07.2026 | Date of Judgment:31.10.2026

A.K. Mohapatra, J. :

1. The Petitioner has filed the present Writ Petition, under Articles 226 and 227 of the Constitution of India, assailing Order No.6157, dated 04.02.2025, at Annexure-3, passed by the Director, Higher Education, Odisha (Opposite Party No.3), wherein the claim of the Petitioner for regularisation of his services in the post of Peon has been rejected, along with a further prayer to direct the Opposite Parties to regularise his services in the post of Peon.

FACTUAL MATRIX OF THE CASE

2. The essential facts of the case, as borne out from the record, are as follows; initially the Petitioner was engaged as a Peon/Attendant by the Principal of S.C.S. (Autonomous) College, Puri, in the year 1999 on a daily-wage basis and, according to the Petitioner, he has continued in the College since then without any break. Furthermore, the Petitioner has been discharging his duties against a substantive, existing, sanctioned post of Peon. It is the case of the Petitioner that certain persons, who were similarly engaged on a daily-wage basis in the year 1999, came to be regularised, whereas his own case for regularisation against the vacant post of Peon was not considered. Aggrieved, the Petitioner approached the Chairman of the College Governing Body. The matter was placed before the Executive Committee of the College in its meeting held on 12.06.2008, which resolved to entrust the Principal with the task of corresponding with the Government. Pursuant thereto, the Principal of the College (Opposite Party No.4), by his letter No.2454 dated 31.07.2010, at Annexure-1, forwarded to the Opposite Party No.3-Director, Higher Education, a list of four daily-labour-rated (DLR) employees, with the Petitioner's name finding place at serial no.3, working in different capacities in the College for regularisation of their services. The

said letter also indicates that one post of Attendant and two posts of Peon were lying vacant on that date, and, the Principal, requested that steps be taken for regular absorption of the DLR employees in accordance with the applicable Acts and Government Rules.

3. The Writ Petition also reveals that, during the long tenure of the Petitioner, he has been assigned varied duties by the Principal, such as assisting the College Football Team and the Wrestling (Men) Team while attending tournaments, and that he was also deputed for duties in the General Election held in 2024, like other regular employees. Copies of some of such assignment orders have been annexed as Annexure-2 Series. Despite rendering such service for such a long period of time, since the Petitioner was not regularized, the Petitioner approached this Court in W.P.(C) No.28457 of 2023. On 08.09.2023, which was disposed of at the stage of admission, without an adjudication non the merits of the matter, with a direction to the Opposite Party No.3 to take a decision in the said petition within three months. In purported compliance, Opposite Party No.3, by the impugned order dated 04.02.2025, at Annexure-3, rejected the claim of the Petitioner. The Petitioner thereupon instituted the present Writ Petition.

4. It is pertinent to mention that during the pendency of the Writ Petition, the Principal of the College (Opposite Party No.5) disengaged the Petitioner after 27 years of continuous service, by an order dated 20.04.2026 and placing reliance on Letter No.19410/HE dated 13.04.2026 issued by the Special Secretary to Government, Department of Higher Education. The Petitioner assailed the same in W.P.(C) No.13991 of 2026, which was disposed of on 06.05.2026, setting aside the order of disengagement and directing his reinstatement, subject to the result of the present Writ Petition. However, since the Petitioner was not re-instated, he preferred CONTC No.3479 of 2026, which was listed on 10.07.2026, and later adjourned to 07.08.2026 for instructions from the contemnors.

CONTENTIONS OF THE PETITIONER

5. Heard Mr. Sisir Das, learned counsel appearing for the Petitioner. The primary contention advanced by the learned counsel for the Petitioner, including the grounds put forth in the Writ Petition, the Rejoinder Affidavit, and the Written Submissions, is that the Petitioner has been working continuously for over 26 years, without any break and to the satisfaction of the authorities, against an existing sanctioned post of Peon. It has been stated that the Principal of the College himself, by

Annexure-1, admitted that posts of Peon and Attendant were vacant and recommended the Petitioner for regular absorption. Therefore, the Opposite Parties are therefore incorrect in asserting that no sanctioned post exists. To further substantiate such a contention, the learned counsel placed reliance on ***Nihal Singh v. State of Punjab***, reported in ***AIR 2013 SC 3547***, for the proposition that a person whose services have been utilised over a long period against a sanctioned post ought to be regularised, and that engagement of persons in contractual, ad hoc or daily-wage capacity for decades is nothing but exploitation.

6. Next, referring to the case of one Gadei Swain, the co-employee figuring at Sl. No.2 of Annexure-1, the learned counsel stated that his claim was also rejected by the Opposite Party No.3. Later, he approached this Court in W.P.(C) No.33108 of 2020, which was allowed vide judgment dated 12.10.2022, at Annexure-4, with a direction to regularise the employee. The States's appeal, being W.A. No.1706 of 2023, was dismissed on 17.10.2023, at Annexure-5. Thereafter, in compliance with the directions of this Court, Opposite Party No.3, by Order No.13627/HE dated 08.04.2024, at Annexure-6, regularised the services of Gadei Swain against a vacant sanctioned post of Junior Clerk in the College. It was contended that the Counter Affidavit by the

Opposite Parties itself records that such regularisation was with prospective effect.

7. In the aforesaid context, the learned counsel submitted that the Petitioner stands on an identical footing with Gadei Swain, who was recommended along with him in the same letter, whose claim was rejected by the same authority on the very same grounds, and who was regularised pursuant to the judgment of this Court dated 12.10.2022, the dismissal of the Writ Appeal, and the dismissal of the State's challenge before the Hon'ble Supreme Court. It was contended that the judgments in ***Gadei Swain*** (*supra*) and ***Surama Manjari Das v. State of Odisha***, bearing ***W.P.(C) No.15763 of 2021***, have been implemented by the State, however, the Petitioner, being similarly circumstanced, has been discriminated against in violation of Article 14 of the Constitution of India. In fact, the learned counsel for the Petitioner also stated before this Court that the case of the Petitioner is squarely covered by the judgment of this Court in ***Sitaram Behera v. State of Odisha***, bearing ***W.P.(C) No.8236 of 2024***, decided on 16.05.2025 (paras 20 to 24).

8. It was further contended that the Finance Department Circular No.178(45)/F dated 12.04.1993 and Resolution No.31715/F dated 04.09.2012 cannot be pressed into service

against the Petitioner, especially since this Court, in ***Prafulla Kumar Sahu v. State of Odisha***, reported in ***O.J.C. No.126 of 2001***, decided on 01.12.2002, held that the Finance Department has no jurisdiction or authority to impose a ban in respect of appointments under the Higher Education Department/educational institutions. The same plea, it was contended, taken by Opposite Party No.3 against one Gadei Swain, was negatived by this Court in W.P.(C) No.33108 of 2020.

9. Thereafter, the learned counsel stated that the rejection of the claim of the Petitioner on the strength of ***Secretary, State of Karnataka v. Umadevi (3),*** reported in ***(2006) 4 SCC 1***, reflects a misreading of that judgment. The Hon'ble Supreme Court made a distinction between illegal and irregular appointments, and directed that irregular appointees who had completed ten years of service be considered for regularisation, without fixing any rigid cut-off date. The Petitioner's engagement is, at the very worst, irregular and not illegal, and the fact that he has served 26 years shows the existence of the post and the perennial need for his work. The fixation of a cut-off date as 01.04.2006 is without any basis, and, what is actually relevant is the continuous service of ten years and above.

10. The learned counsel for the Petitioner contended that the

principle in ***Umadevi*** (*supra*) has since been explained in a catena of judgements viz. ***Jaggo v. Union of India***, reported in ***2024 SCC OnLine SC 3826*** (paras 16, 20, 21, 22, 26 and 27); ***Shripal v. Nagar Nigam, Ghaziabad***, reported in ***2025 SCC OnLine SC 221***; and ***Dharam Singh v. State of U.P.***, bearing ***Civil Appeal No.8558 of 2018***, decided on 19.08.2025, wherein it has been observed that where public institutions depend, day after day, on the same hands for permanent tasks, equity demands that those tasks be placed on sanctioned posts and that the workers be treated with fairness and dignity. Therefore, the learned counsel contended, the pronouncement in ***Umadevi*** (*supra*) cannot be "weaponised" against employees like the Petitioner who have rendered indispensable, continuous service over decades.

11. Next, referring to Notification dated 12.11.2013, at Annexure-8, by the GA&PG Department, Government of Odisha, wherein the Odisha Group-C and Group-D Posts (Contractual Appointment) Rules, 2013 were framed, the learned counsel for the Petitioner stated that as per Rule 10(1) of the aforesaid notification, upon satisfactory completion of six years of contractual service under Rule 9(1), the appointee shall be deemed to have been regularly appointed and a formal order of regular appointment shall be issued by the appointing authority. In

the present case, the Petitioner, having served for 26 years, cannot be deprived of the benefit of the policy embodied in the said Rules, and the Opposite Party No.3 has failed to consider the same.

12. It was contended by the learned counsel for the Petitioner that the nature of the work performed by the Petitioner is regular and perennial, that he has rendered more than 240 days of service in every year and, the Opposite Parties, having taken work from him for 26-27 years, are estopped from questioning the nature of the engagement. It has been contended that the Opposite Parties have exploited the Petitioner by engaging him as a casual labourer and paying him less than regular Group-C and Group-D employees, while never considering his case for regularisation despite the admission of vacant sanctioned posts by Opposite Party No.4.

13. In such view of the matter, the learned counsel for the Petitioner contended that the impugned order has been passed without application of mind and in complete disregard of the settled law as well as the earlier orders of this Court, resulting in the loss of livelihood of the Petitioner after 27 years of continuous service. As such, the learned counsel for the Petitioner stated that the service of the Petitioner be regularised and all related service

benefits be disbursed in his favour.

CONTENTIONS OF THE OPPOSITE PARTIES

14. Heard Mr. S. K. Parhi, learned Additional Standing Counsel appearing for the Opposite Parties. The State-Opposite Party No.1 has resisted the Writ Petition by filing a counter affidavit and taking the stand, at the outset, that since the Petitioner, despite the ban imposed by the Finance Department vide its Circular No.178(45)/F dated 12.04.1993, was engaged as Peon/Attendant in 1999 on a daily-wage basis, without following the due procedure of selection and without the prior approval of the Administrative Department, his claim for regularisation does not merit consideration. Additionally, it was contended that in compliance with the order dated 08.09.2023, passed in W.P.(C) No. 28457 of 2023, the Higher Education Department examined the claim of the Petitioner, which had been submitted in the shape of a proposal by the Principal of the College, for filling up vacant non-teaching Group-C and Group-D posts, with reference to Finance Department Resolution No.31715/F dated 04.09.2012 and General Administration and Public Grievance Department Letter dated 03.03.2021, and rejected it by a well-reasoned order dated 04.02.2025.

15. Learned ASC, again submitted before this Court that the Finance Department, by Circular No.178(45)/F, dated 12.04.1993, banned the engagement of daily-wage workers, work-charged employees and NMRs in Government establishments, and by Resolution No.31715/F dated 04.09.2012 stipulated that any engagement in violation thereof would result in personal responsibility being fixed on the officer engaging such persons and, on the person disbursing their wages. A regular vacant Class-IV post cannot, therefore, be filled by engagement of outsiders as work-charged/NMR/daily-wage workers without the concurrence of the Finance Department.

16. Learned ASC appearing for the State-Opposite Parties further contended that earlier the State had framed a scheme for absorption of NMR/DLR workers engaged prior to 12.04.1993, by conferring 'Temporary Status' in the first instance, and thereafter providing scope for absorption against Group-D vacancies in the event such persons were conferred with a temporary status and continued in service for at least 240 days in a year since initial engagement. The learned ASC submitted that the Petitioner, engaged in 1999, was not eligible for conferment of temporary status and is outside the scheme. It is further averred that no

vacant sanctioned/created posts existed in the institution for absorption on a permanent basis.

17. Next, relying on ***Umadevi*** (*supra*) and on the gist thereof outlined in the GA&PG Department Letter dated 03.03.2021 and Office Memorandum No.10682/Gen dated 19.04.2022, at Annexure-B/1, the learned ASC contended that illegal appointments cannot be regularised at all, that irregular appointments cannot be regularised save for the one-time relaxation in favour of those who had continued for at least ten years as on 10.04.2006 without the protection of any court order, and that the ratio of ***Umadevi*** (*supra*) does not extend to contractual engagements made after 11.04.1996 or those not continuous for ten years as on 10.04.2006. Long continuance, it was urged by the learned ASC, does not give rise to a right for regularisation.

18. Thereafter, the learned ASC relied on ***State of Rajasthan v. Daya Lal***, reported in ***(2011) 2 SCC 429***, to put forth the proposition that Courts cannot direct absorption or regularisation of temporary employees whose initial appointments were not in accordance with statutory rules, and that equitable considerations cannot override mandatory legal requirements. Likewise, referring

to ***State of Karnataka v. M.L. Kesari***, reported in ***AIR 2010 SC 2587***, the learned ASC submitted that courts must be wary not to interfere unduly with the economic arrangement of the State's affairs nor lend themselves as instruments for bypassing constitutional and statutory mandates. In a similar vein, relying on ***Upendra Chandra Gogoi v. State of Assam***, reported in ***AIR 1998 SC 1289***, the learned ASC put forth the proposition that an illegality at inception cannot be sanctified at a later stage.

19. The learned ASC also submitted that the Petitioner appears to have continued in service, but without any formal or periodic renewal orders by the competent authority, and such continuation dehors the rules creates no enforceable right in favour of the Petitioner. Particularly, in the absence of a sanctioned post or regular appointment, the engagement of the Petitioner is untenable in law. The learned ASC submitted that at best, irregularly engaged employees might be permitted to compete in a regular recruitment with relaxation of age and some weightage for service, and nothing beyond that can be directed.

20. Lastly, addressing the Petitioner's reliance on ***Gadei Swain*** (*Supra*), learned ASC submitted that such reliance is misplaced since ***Gadei Swain's*** case (*supra*) was decided on its own facts

and legal context, and cannot be treated as a binding precedent or a general policy decision. The learned ASC, in this context, also invokes the principle that Article 14 does not envisage negative equality, placing reliance on ***Chaman Lal v. State of Punjab***, bearing ***Civil Appeal No.2273 of 2011***. In such view of the matter, the learned ASC submitted before this Court that granting regularisation without open selection would violate equality of opportunity, merit-based competition and administrative fairness, would encourage similar demands and would undermine recruitment discipline. As such, it was prayed that the present Writ Petition, being devoid of merit, is liable to be dismissed.

ANALYSIS OF THE COURT

21. Heard the learned counsel for the Petitioner and the learned ASC appearing for the State-Opposite Parties. Perused the Writ Petition, the Counter Affidavit by the Opposite Party No.1, the Rejoinder thereto filed by the Petitioner, along with the Written Notes by the Petitioner. At the outset, it needs to be noted that vide its earlier order dated 08.09.2023, this Court had called upon Opposite Party No.3 to decide the claim "in accordance with law", without any expression of opinion on merits. The question before this Court in the exercise of its jurisdiction under Article

226, therefore, is whether the decision taken in the impugned order dated 04.02.2025, at Annexure-3, is in accordance with law, that is to say, whether it is founded on relevant and applicable legal and factual considerations and is consistent with the constitutional guarantee of equality and non-arbitrariness under Articles 14 and 16, or whether it proceeds on a mechanical application of instruments and precedents which do not govern the case, while ignoring material that ought to have been considered.

22. One of the primary grounds on which the State-Opposite Party has controverted the Petitioner's stance, is the Finance Department Circular No.178(45)/F dated 12.04.1993, read with Resolution No.31715/F dated 04.09.2012. In this context, the Petitioner has pleaded, and the State has not effectively countered, that this Court in ***Prafulla Kumar Sahu v. State of Odisha***, bearing ***O.J.C. No.126 of 2001***; ***2003 (I) OLR 1991*** decided on 01.12.2002, held that the Finance Department has no jurisdiction to impose a ban order in respect of educational institutions. The counter affidavit does not refer to this judgment, much less does it suggest that it has been overruled, reversed or otherwise rendered inapplicable in any way whatsoever. More significantly, the very same defence was taken by Opposite Party No.3 in the case of

Gadei Swain (*supra*), a co-employee of the Petitioner in the same College, and was negatived by this Court in ***W.P.(C) No.33108 of 2020***, at Annexure-4, particularly at paragraph 6.

23. Similarly, even taken at its highest, the Resolution of 04.09.2012, a copy of which is available at Annexure-A/1 series to the Counter Affidavit, prescribes a consequence, as extracted in the counter affidavit itself at para 9, namely the fixation of personal responsibility on the officer engaging such persons and on the person disbursing their wages. It does not say that a person who has actually worked and has been paid wages for long years forfeits any claim in law, nor does it say that the institution is to be denied the benefit of regularising a long-serving worker against a sanctioned vacant post. The default, if any, lay with the College and the supervising authorities, who allowed the Petitioner to work for 26 years and drew wages for him from the public exchequer. The consequence of that default cannot be visited upon the employee-Petitioner.

24. As regards the 'Temporary Status' scheme, the Counter Affidavit makes it clear that the scheme applies to persons engaged prior to 12.04.1993, with continuous service of 240 days in a year. The Petitioner concedes that his engagement was in the

year 1999 and, therefore, has no claim under that scheme. That said, it must be borne in mind that the scheme is one avenue framed by the State for a particular class of workers. Ineligibility under one scheme cannot be transmuted into a bar under all schemes and under the general law. Especially since the Petitioner rests his claim of regularisation of his service on long continuous service against a sanctioned post, on the settled law regarding irregular appointments as explained by the Hon'ble Supreme Court, and on parity with a similarly placed co-employee. The rejection of the Petitioner's claim solely for want of Temporary Status, therefore, fails to address the real basis on which such a claim was put forth.

25. At this stage, it is apposite to reiterate the distinction between an 'illegal' and an 'irregular' appointment which lies at the heart of ***Umadevi (3)*** (*Supra*). The Constitution Bench, in ***Umadevi (3)*** (*Supra*), held that regularisation is not a mode of recruitment, that appointments made dehors the constitutional scheme cannot confer a right to be absorbed, but recognised, in paragraph 53, that a distinction must be drawn between an illegal appointment and an irregular one, and directed a one-time exercise for regularisation of those irregularly appointed, who had

worked for ten years or more against duly sanctioned posts without the protection of orders of courts or tribunals. The classification adopted by the State's own GA&PG Department, as reproduced in the counter affidavit at paragraph 15, is also to the same effect, i.e., an appointment made against a non-sanctioned post, or of a person not possessing the essential qualification, is illegal and, an appointment made against a sanctioned post of a person who possessed the prescribed qualification, but otherwise than by the due recruitment procedure, is irregular.

26. It is in this backdrop that it has to be seen on which side of the line the case of the Petitioner falls, on the material available on record. The Counter Affidavit, in paragraphs 12 and 20, asserts in general terms that there were no vacant sanctioned/created posts in the institution and that in the absence of any sanctioned post the engagement is not valid in law. On a perusal of the record, this Court finds the said assertion unsupported by any document. In fact, it stands contradicted by Annexure-1, which is a communication from the Principal of the College himself, being the appointing/controlling authority, stating that posts of Peon and Attendant were vacant and recommending the Petitioner and others for regular absorption. Nothing has been placed on record

by the State to show that this communication was incorrect. It is also relevant to note that the Counter Affidavit, in para 24, admits that Gadei Swain was indeed regularised against a vacant sanctioned post in the same College with prospective effect. The counter affidavit does not, moreover, specifically plead that the Petitioner lacks the qualification prescribed for the post of Peon. As such, the stance of the Petitioner in this regard, stands unrebutted. Additionally, the counter affidavit, at paragraph 20, itself concedes that the Petitioner "appears to have continued in service in the college", which is an acknowledgement that the College has, for a quarter of a century, availed the services of the Petitioner. Therefore, this Court finds it difficult to accept that the Petitioner's engagement was 'illegal' in the sense in which ***Umadevi (3)*** (*Supra*) uses the expression. At most, the engagement of the Petitioner can be said to have been made without the observance of the due procedure of open selection, and would therefore fall within the category of an 'irregular' engagement.

27. It is clear that the State has placed significant weightage on the fact that, having been engaged in 1999, the Petitioner had not completed ten years of service as on 10.04.2006. The GA & PG

Department Office Memorandum dated 19.04.2022, as extracted in the counter affidavit at Annexure-B/1, proceeds on the same footing as well.

28. However, keeping the aforesaid in mind, this Court is unable to accept that the one-time measure in ***Umadevi (3)*** (*Supra*) exhausts the entire field of the law on the subject or operates as a perpetual bar on long-serving employees who could not complete ten years by 10.04.2006. Firstly, the direction in paragraph 53 of *Umadevi* was in the nature of a one-time measure which the Constitution Bench itself directed the State Governments and their instrumentalities to undertake, so as to put an end to the practice of ad hoc engagements. In ***State of Karnataka v. M.L. Kesari***, reported in ***(2010) 9 SCC 247***, the Hon'ble Supreme Court reiterated that the one-time exercise contemplated by ***Umadevi (3)*** (*Supra*) was to be undertaken by the State, and that irregular appointees who had completed ten years of service without the protection of court orders were to be considered. In the present case, as the Petitioner has pointed out in his rejoinder (at paragraph 6) that the Opposite Parties took no steps whatsoever in this regard in the intervening period and allowed the Petitioner to continue for a further period of nearly

two decades. The State, having failed to do what it was called upon to do, cannot rely on that very inaction to shut out a claim that has since matured with the passage of time.

29. Secondly, and more importantly, the Hon'ble Supreme Court has, in a line of recent decisions, cautioned against the mechanical use of ***Umadevi (3)*** (*Supra*) as a shield to perpetuate insecure, long-term temporary engagements against permanent posts. In ***Jaggo v. Union of India***, reported in ***2024 SCC OnLine SC 3826***, the Hon'ble Supreme Court held that Courts must look beyond the labels attached to an engagement and consider the realities of employment, namely continuous long-term service, indispensable duties and the absence of mala fides or illegality in the engagement. The Apex Court deprecated the pervasive misuse of temporary engagements and, on a comparison with persons who had been regularised, found the disparity violative of Articles 14 and 16. The Hon'ble Supreme Court also distinguished ***Umadevi (3)*** (*Supra*) as being aimed at preventing backdoor entries and not at penalising employees who have rendered long service in roles integral to the functioning of the institution, and relied on its earlier decision in ***Vinod Kumar v. Union of India***, reported in ***(2024) 1 SCR 1230***. The relevant paragraphs of the

pronouncement in ***Jaggo*** (*supra*) are reproduced hereinbelow for better appreciation;

> "***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.*
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> ***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.*
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> ***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.

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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."

(Emphasis Supplied)

30. A similar view was also reiterated in ***Shripal v. Nagar Nigam, Ghaziabad***, reported in ***2025 SCC OnLine SC 221***, where the appellants, who had continuously performed perennial horticultural and maintenance duties under the supervision of the Nagar Nigam, claimed regularization and statutory benefits before the Labour Court and, thereafter, the High Court The Apex Court accepted the substance of their claim, holding, inter alia, that the work performed by them was integral and perennial to the municipal functions and that ***Umadevi (3)*** (*supra*) could not be mechanically invoked to justify such prolonged temporary engagement. The appeals preferred by the workmen were

accordingly allowed. The relevant paragraphs of the decision are quoted below for better appreciation;

> "***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.*
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> ***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…*"

(Emphasis Supplied)

31. In a similar vein, in ***Dharam Singh v. State of U.P.***, reported in ***2025 SCC OnLine SC 1735***, the Hon'ble Supreme Court, at the very outset, observed that where public institutions depend, day after day, on the same hands to perform permanent tasks, equity demands that those tasks be placed on sanctioned posts and that the workers be treated with fairness and dignity.

The Apex Court also, once again, cautioned against the selective invocation of ***Umadevi (3)*** (*Supra*) to overlook the very cases which the judgment itself acknowledged as appropriate for regularisation. The relevant paragraphs of the aforesaid decision are quoted hereinbelow;

> **"*11.*** *Furthermore, it must be clarified that the reliance placed by the High Court on* ***Umadevi (Supra)*** *to nonsuit 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 & Another 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…"

(Emphasis Supplied)

32. In ***Vinod Kumar v. Union of India***, reported in ***(2024) 9 SCC 327***, the appellants, appointed on temporary basis, continued to discharge the duties of the posts for more than 25 years. Their claim for regularization and absorption was rejected by the Central Administrative Tribunal on the ground that their appointments were temporary and scheme-specific, and the High Court subsequently affirmed the said decision. In appeal, the Hon'ble Supreme Court held that the employment status of the appellants could not be determined merely by reference to the initial terms of appointment. Ultimately, while allowing the appeals and setting aside the judgment of the High Court, the Apex Court made the following observations;

> "***5.*** *Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of*

regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. *The application of the judgment in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753].*

7. *The judgment in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S)*

753] 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…"

(Emphasis Supplied)

33. Likewise, in ***Bhola Nath v. State of Jharkhand & Ors.***, reported in ***2026 INSC 99***, the Appellants had been engaged by the State against sanctioned posts on a contractual basis in 2012 and continued in service through successive extensions for over a decade. Their claim for regularization was rejected by the High Court on the ground that their appointments were contractual. The Hon'ble Supreme Court, however, examined the State's action in discontinuing such long-standing engagement in the context of Article 14 of the Constitution and its obligation to act as a model employer, and held such abrupt discontinuance of long-standing engagement, solely on the basis of contractual nomenclature, as violative of Article 14 of the Constitution of India. While setting aside the impugned judgement of the High Court, the Apex Court made the following observations relevant for the present matter;

*"**13.3.** In our considered opinion, the aforesaid action is not only vitiated by arbitrariness but is also in clear derogation of the equality principles enshrined in Article 14 of the Constitution. The respondent-State initially engaged the appellants in their youth to discharge public duties and functions. Having rendered long and dedicated service, the appellants cannot now be left to fend for themselves, particularly when the employment opportunities that may have been available to them a decade ago are no longer accessible owing to age constraints.*

***13.4.** We are unable to discern any rational basis for the respondent-State's decision to discontinue the appellants after nearly ten years of continuous service. We are conscious that the symbiotic-relationship between the appellants and the respondent-State was mutually beneficial, the State derived the advantage of the appellants' experience and institutional familiarity, while the appellants remained in public service. In such circumstances, any departure from a long-standing practice of renewal, particularly one that frustrates the legitimate expectation of the employees, ought to be supported by cogent reasons recorded in a speaking order.*

***13.5.** Such a decision must necessarily be a conscious and reasoned one. An employee who has satisfactorily discharged his duties over several years and has been granted repeated extensions cannot,*

overnight, be treated as surplus or undesirable. We are unable to accept the justification advanced by the respondents as the obligation of the State, as a model employer, extends to fair treatment of its employees irrespective of whether their engagement is contractual or regular.

***

13.9. *The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason."*

(Emphasis Supplied)

34. It may be noted at this stage, that unlike in some of the cases decided by the Hon'ble Supreme Court, the Petitioner's case presents an even more compelling picture, because in the present case there is an admission by the head of the institution, in Annexure-1, that vacant sanctioned posts existed as far back as 2010, and the Petitioner was recommended for regular absorption.

The Petitioner has by now rendered 27 years of continuous service, which is far in excess of the ten years contemplated even by ***Umadevi (3)*** (*Supra*). His duties, as borne out by Annexure-2 Series, were not confined to those of a mere Peon but extended to varied institutional responsibilities, including election duties in 2024 discharged in the manner of regular employees. The aforesaid facts have not been disputed by the Opposite Parties. The claim of the Petitioner that he has put in more than 240 days of service every year, and that the work was of a regular and perennial nature, has also not been specifically controverted. Such long-drawn and uninterrupted engagement, against work of a perennial nature, and against a post which the institution itself has declared vacant, does not fall prey to the 'backdoor entry' which ***Umadevi (3)*** (*Supra*) set out to prevent. Instead, it is the kind of long, continued irregularity which the Hon'ble Supreme Court, in ***Jaggo*** (*supra*), ***Shripal*** (*supra*), and a catena of other decisions cited above, has held must be redressed on the wider principles of fairness and equity.

35. Additionally, also, to advance his case the Petitioner claims parity with the case of one Gadei Swain. On a perusal of the record, particularly the copy of the judgement of this Court in

W.P.(C) No.33108 of 2020, decided on 12.10.2022, this Court notes the following undisputed features; both the Petitioner as well as Gadei Swain were DLR employees of the same College and both were recommended for regular absorption by the Principal of the institution by the same letter, at Annexure-1, at Sl. Nos. 3 and 2 respectively. Gadei Swain's claim was initially rejected by the same authority, Opposite Party No.3, on the same grounds. However, this Court, in abovementioned judgement, set aside the rejection and directed regularisation. The subsequent Writ Appeal preferred by the State (W.A. No.1706 of 2023) was dismissed and the State's challenge before the Hon'ble Supreme Court also did not succeed. In the end, by Order No.13627/HE, dated 08.04.2024, at Annexure-6, Gadei Swain was regularised. Para 24 of the counter affidavit filed by the Opposite Party No.1 accepts these facts, including the fact that regularisation was made against a vacant sanctioned post in the College.

36. The State's opposition to the aforesaid claim of the Petitioner is twofold: that ***Gadei Swain*** (*supra*) was decided on its own facts and cannot be treated as a binding precedent or general policy, and that Article 14 of the Constitution of India does not embrace negative equality. So far as the first defence is

concerned, this Court, on a perusal of the record, is of the conclusion that the State has not pointed to a single fact distinguishing the case of the Petitioner from that of Gadei Swain. No difference in the date or manner of engagement, in the nature of the post, in the length of service, or in the qualifications, has been pleaded. A bald plea that the case of the co-employee was decided on its own facts, without specifying in what respect the facts differ, cannot be considered as a defence to the allegation of discriminatory treatment.

37. Likewise, regarding the second defence of negative inequality, the principle, as explained in ***Chaman Lal v. State of Punjab***, reported in ***(2014) 15 SCC 715***, at para 15, and ***Basawaraj v. Special Land Acquisition Officer***, reported in ***(2013) 14 SCC 81***, at para 8, undoubtedly precludes a person from claiming parity merely on the basis of an illegal, irregular, inadvertent or erroneous benefit extended to another. The principle, however, is not attracted to the present case in the manner sought to be invoked by the Opposite Parties. The benefit in question, regularisation of service of Gadei Swain, was not the result of an inadvertent administrative error or an isolated wrong order sought to be replicated as a matter of parity. Rather, it

flowed from a considered adjudication by this Court, which was subjected to appellate scrutiny, attained finality, and was thereafter acted upon and implemented by the State itself. The State, having accepted and given effect to the said determination, cannot, for the purpose of defeating the Petitioner's claim, seek to characterise the benefit in Gadei Swain's case as a mere wrong or inadvertent benefit attracting the doctrine of negative equality.

38. Viewed in the light of the foregoing discussion, the impugned order at Annexure-3 cannot be sustained, especially since it proceeds on **(a)** the Finance Department circular and resolution, without any reference to the judgment of this Court holding that the Finance Department has no authority to impose a ban in respect of educational institutions and without reference to the judgment in *Gadei Swain*; **(b)** the Temporary Status scheme, which the Petitioner does not claim under; and **(c)** an unqualified application of ***Umadevi (3)*** (*supra*) with reference to a cut-off date, without considering the distinction between illegal and irregular appointments, the subsequent explanation of the said judgment by the Hon'ble Supreme Court, the admission of vacancy in Annexure-1, and the claim of parity with Gadei Swain.

39. Moreover, this Court cannot lose sight of the human

element of the case as well as the exploitation of employees by engaging them for several decades with lower remuneration. The Petitioner was engaged initially in 1999 and has served the College in varied capacities, being treated as a regular functionary when it suited the institution, for more than a quarter of a century. The State, being a model employer, cannot, after taking work for 27 years, discard the workman on the ground that his initial engagement was not preceded by a selection which the State's own agents failed to conduct. As the Hon'ble Supreme Court has observed in ***Jaggo*** (*supra*) and ***Shripal*** (*supra*), financial stringency and the label of the engagement cannot be used to defeat fairness. Also, the plea of the State-Opposite Parties that regularisation of the Petitioner's service would encourage similar demands and undermine recruitment discipline does not carry weight in a case where the State has already extended the same benefit to similarly situated persons of the same College.

40. As such, in view of the discussion above, this Court is of the considered opinion that the impugned order dated 04.02.2025, at Annexure-3, passed by the Director, Higher Education (Opposite Party No.3), is unsustainable in law. The same is hereby set aside. The Petitioner shall, in the meantime, be

continued in service in terms of the order dated 06.05.2026 passed in W.P.(C) No.13991 of 2026. The Opposite Parties are hereby directed to regularise the services of the Petitioner in the post of Peon in S.C.S. (Autonomous) College, Puri, against the sanctioned vacant post, within a period of eight weeks from the date of production of a certified copy of this judgment. The Petitioner shall also be entitled to such consequential service benefits flowing from the regularisation, as are admissible in law.

41. So far as the CONTC No.3479 of 2026 is concerned, it shall be dealt with on its own merits, in accordance with law.

42. Accordingly, the Writ Petition is allowed. However, there shall be no order as to costs.

(Aditya Kumar Mohapatra)
Judge

Orissa High Court, Cuttack

The 31st October, 2026/ Rubi/ Sr. Stenographer

Signature Not Verified
Digitally Signed
Signed by: RUBI BEHERA
Reason: Authentication
Location: OHC
Date: 02-Nov-2026 16:53:29