



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CWP-5684-2026
Daljeet Singh and othersPetitioners
Versus
State of Punjab and another ...Respondents

2) CWP-5766-2026
Rohi Ram and othersPetitioners
Versus
State of Punjab and another ...Respondents

Reserved on: 09.03.2026
Pronounced on: 22.04.2026
Uploaded on: 23.04.2026

3) CWP-8371-2026
Jasdeep Singh and othersPetitioners
Versus
State of Punjab and others ...Respondents

Reserved on: 19.03.2026
Pronounced on: 22.04.2026
Uploaded on: 23.04.2026

4) CWP-10623-2026
Ravinder Singh and othersPetitioners
Versus
State of Punjab and another ...Respondents

Reserved on: 08.04.2026
Pronounced on: 22.04.2026
Uploaded on: 23.04.2026



Whether only the operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Sumati Jund, Advocate
with Mr. Rahul Saini, Advocate
for the petitioner(s) (in all the aforementioned petitions)

Mr. Vikas Arora, DAG, Punjab.

Mr. Abhilaksh Gaind, Standing Counsel
with Mr. Rakesh Roy, Advocate and
Ms. Priya Jarial, Advocate
for respondent No.2-PEPSU Road Transport Corporation
(in all cases).

HARPREET SINGH BRAR, J.

1. This common order shall dispose of all the aforementioned petitions as they arise from a similar factual matrix and pose an identical question of law. However, for the sake of brevity, the facts are taken from ***CWP-5684-2026***.

2. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ, especially in the nature of *Mandamus*, directing the office of respondents to regularize the services of the petitioners, who have been working at various posts in the office of respondent-PEPSU for the last 10 to 20 years. A further prayer is made for issuance of a writ in the nature of *Mandamus*, directing the respondents to grant all consequential benefits arising from the same.



CONTENTIONS

3. Learned counsel for the petitioners contends that the petitioners were appointed on various posts (mechanic, upholster, fireman, driver, conductor etc.) by the competent authority *albeit* through an outsourcing agency. The petitioners have been working with the respondent-PEPSU for 10-20 years on contractual basis against regular sanctioned posts with their terms being extended year after year. Additionally, the buses plied by the respondent-PEPSU as well as their time table and routes, are prepared by the State instrumentality itself and is common for both the regular employees and temporary employees. In fact, admittedly, the duties entrusted to both sets of employees are interchangeable. As such, there is no difference in the work allocated to them in nature or quantum. Thus, in view of the long service rendered by the petitioners wherein they have been performing the same duties as their regular counterparts, multiple representations for regularization and consequential benefits were made. However, to no avail. Learned counsel relies upon the judgments rendered by the Hon'ble Supreme Court in ***Jaggo vs. Union of India* 2025 AIR SC 296; Vinod Kumar and others vs. Union of India and others (2024) 9 SCC 327; and Shripal and Another vs. Nagar Nigam, Ghaziabad 2025 SCC OnLine SC 221**, as well as the judgement of this Court in ***Hans Raj and others vs. PEPSU Road Transport Corporation* (CWP-1221-2021 decided on 03.09.2025)**, to contend that the petitioners are entitled to regularisation.

4. *Per contra*, learned counsel for respondent-PEPSU submits that the petitioners were engaged through M/s S.S. Service Providers, an outsourcing agency, which is thus, their principal employer. Furthermore, it is



the agreement between the respondent-PEPSU and M/s S.S. Service Providers that has been extended from time to time, as is discernible from Annexures R-2/2 to R-2/6). The respondents have been remitting monthly payments to M/s S.S. Service Providers, which in turn disburses salaries to the petitioners. It is further submitted that, on certain occasions, the services of the petitioners were reverted to the said agency, resulting in breaks in their engagement with respondent-PEPSU. Accordingly, it is contended that no direct employer-employee relationship exists between the petitioners and respondent-PEPSU. Learned counsel further submits that the petitioners cannot claim the relief under the Punjab Ad hoc, Contractual, Daily Wage, Temporary, Work Charged and Outsourced Employees' Welfare Act, 2016 as the same was kept in abeyance owing to the challenge of its *vires* before this Court in CWP-4187-2017, titled as ***Anika Gupta and another vs. State of Punjab***. Furthermore, respondent-PEPSU is governed by the PEPSU Road Transport Corporation (Conditions of Appointment and Service Regulations), 1981, which do not contain any provision regarding regularization of the services of outsourced employees. Learned counsel refers to the judgments rendered by the Hon'ble Supreme Court in ***Secretary, State of Karnataka vs. Uma Devi and others AIR 2006 SC 1806*** and ***The Municipal Council Rep by its Commissioner Nandyal Municipality Kurnool District AP vs. K. Jayaram and others*** in SLP(C) 17711-17713/2019, decided on 16.12.2025, to submit that the claim of the petitioners for regularization is not maintainable.

OBSERVATIONS AND ANALYSIS

5. Having heard learned counsel for the parties and after perusing the



record of the case, it transpires that the petitioners were engaged through an outsourcing agency namely M/s S.S. Service Providers. The petitioners have been working consistently for 10 to 20 years, respectively, against sanctioned posts. Admittedly, the nature and quantum of duties of the petitioners are identical to their regular counterparts. However, the claim for the regularization of their services has been contested by respondent-PEPSU on the ground that there is no employer-employee relationship between them as M/s S.S. Service Providers continues to be the principal employer of the petitioners.

6. At this juncture, it may be profitable to refer to the judgment rendered by a four-Judge bench of the Hon'ble Supreme Court in ***Dharangadhara Chemical Works Ltd. vs. State of Saurashtra 1956 INSC 71***, wherein, speaking through Justice N.H. Bhagwati, the following was observed:

*“14. The principle which emerges from these authorities is that **the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work,** or to borrow the words of Lord Uthwatt at page 23 in ***Mercy Docks and Harbour Board v. Coggins and Griffith (Liverpool) Ltd., 1947-1 AC 1, at p. 23.****

"The proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

(Emphasis added)

Reliance in this regard may also be placed on the judgment rendered by the Hon'ble Supreme Court in ***Workmen of Nilgiri Coop. Mktg. Soc. Ltd. vs. State of Tamil Nadu 2004 INSC 89.***



6.1. Further, a three-Judge bench of the Hon'ble Supreme Court in ***Hussainbhai vs. Alath Factory Tezhilali Union 1978 INSC 118***, speaking through Justice V.R. Krishna Iyer, opined as follows:

*“5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the worker's subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. **The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor.** Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Arts, 38-39-42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.*

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.”

(Emphasis added)

6.2. A conjoint reading of ***Dharangadhara Chemical Works (supra)*** and ***Hussainbhai (supra)*** indicates that in order to establish an employer-employee relationship, emphasis must be on the substance of the arrangement rather than its form. As such, the primary test to determine existence of an employer-employee relationship is- whether the principal employer exercises control and supervision, not only over the work assigned to the employee but



also the manner of its execution. Additionally, the Courts must also examine if the livelihood and continued employment of the employee are substantially dependent upon the principal employer. As such, where the situation satisfies the aforementioned parameters, the Court is required to lift the veil of contractual arrangements to discern the real nature of the relationship and not be misled by the ‘legal appearances and documents.’

7. On that note, this Court has been constrained to observe a trend where long term employees are engaged on *ad hoc* basis, in spite of the perennial nature of the services rendered by them. The State, being a constitutional employer, cannot be allowed to exploit its temporary employees when they have been consistently serving its instrumentality for a significant time period. Such an approach would be violative of fundamental rights of the temporary employees enshrined in Articles 14, 16 and 21 of the Constitution of India. Further still, temporary employees cannot be forced to bear the brunt of lack of financial resources when the State had no qualms about continuously taking advantage of the services rendered with regard to integral and recurring work of the concerned department. Reliance in this regard can be placed on the judgments rendered by the Hon’ble Supreme Court in ***Jaggo (supra)***, ***Vinod Kumar (supra)*** and ***Shripal (supra)***.

7.1. Recently, a two-Judge Bench of the Hon’ble Supreme Court in ***Dharam Singh and others vs. State of U.P. and another 2025 SCC OnLine SC 1735***, speaking through Justice Vikram Nath, has held as follows:

“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* and in *Shripal v. Nagar Nigam, Ghaziabad* 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....

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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.

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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 of ends 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.”

(Emphasis added)

8. Furthermore, the Constitution Bench of the Hon'ble Supreme Court in ***Uma Devi (supra)*** proscribes regularization of an employee, who was granted backdoor entry into public employment, without following a transparent process. Speaking through Justice P.K. Balasubramanyan, the following was held:

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

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent



service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in **Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]**. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. **This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.**

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

(Emphasis added)

8.1. Recently, a two Judge bench of the Hon’ble Supreme Court in **Madan Singh vs. State of Haryana 2026 SCC OnLine SC 628**, speaking through Justice A.S. Chandurikar, held as follows:

“18. The object behind issuing these two Notifications for regularising the service of Group ‘B’, ‘C’ and ‘D’ employees, who had



been working on ad hoc/contractual/daily wage/work charged basis is evident from the Notifications itself. The same intended to cover such employees, who had been deprived of the benefit of the policy of regularisation dated 07.03.1996. The criteria prescribed was not in any manner watered down or deviated from the criteria required to be satisfied while seeking regular appointment. What is most relevant, in our view, is that such engagement should have been initially made on a sanctioned post and such engagement on the sanctioned post ought to be continuing even on the date of regularisation of service. This would clearly indicate that when such engagement on ad hoc basis was initially made, sanctioned posts were available and this position continued for a number of years so as to enable regularisation of services of the incumbents holding such posts. The criteria prescribed, therefore, is very much in tune with the criteria that would have otherwise been prescribed had the post been advertised for regular recruitment. We, therefore, find that the exercise of regularising the services of ad hoc employees, who had been left out from getting benefit of the earlier policy that was granted to some ad hoc employees was now being granted to the remaining ad hoc employees. It is not the case of the original petitioners before the High Court, who had challenged the aforesaid Notifications that all ad hoc employees, who were eligible to have their services regularised pursuant to the policy dated 07.03.1996, had already been regularised and that the Notifications dated 16.06.2014 and 18.06.2014 were intended to facilitate the regularisation of services of some ineligible ad hoc employees. There is no such material placed on record even to indicate that the beneficiaries of the regularisation policy vide Notifications dated 16.06.2014 and 18.06.2014 were in fact not eligible to such benefit under the policy dated 07.03.1996. The exercise undertaken by the General Administration Department in issuing these Notifications, therefore, cannot be questioned on the ground of arbitrariness, illegality or as being the outcome of a mala fide exercise of executive power. These relevant aspects do not appear to have been gone into by the High Court while holding otherwise.

*19. Much emphasis has been placed on the aspect that despite the policy of regularisation being required to be undertaken as an “one time measure” as enunciated in paragraph 44 of the decision in Umadevi (supra), the State Government sought to undertake this exercise of regularisation belatedly and in a perpetual manner. In this regard, we may usefully refer to observations of this Court in **M L Kesari (supra)** wherein this aspect has been clarified. In paragraphs 5 to 8 of the said decision, it has been held as under:*

“5. It is evident from the above that there is an exception to the general principles against ‘regularization’ enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or



protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

(iii) Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

6. The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

7. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the onetime exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all



daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

8. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. *The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. **The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.***

20. Thus, given the object behind issuing the Notifications dated 16.06.2014 and 18.06.2014, which was primarily to grant the benefit of regularisation to those remaining Group 'B', 'C' and 'D' ad hoc, contractual/daily wage employees, which benefit had been granted to similarly placed employees pursuant to Notification dated 07.03.1996, we do not find any reason whatsoever to hold that the Notifications dated 16.06.2014 and 18.06.2014 were liable to be quashed as being arbitrary, illegally or contrary to the law laid down by this Court in its various decisions.

21. On 07.07.2014, the General Administration Department of the State Government came up with a policy decision to regularise the services of Group 'B', 'C' and 'D' employees. This policy, however, was slightly distinct from the earlier Notifications dated 16.06.2014 and 18.06.2014. **Significantly, what was provided for was that the services of ad hoc**



employees, who had or were to complete ten years of service at the future date of 31.12.2018 were to be regularised even if his/her original appointment was not made through the process of advertisement and interview. The criteria prescribed was (a) possessing the prescribed qualification for the post on the date of appointment/engagement, (b) the work discharged was to be on a sanctioned vacant post at the time of the initial engagement and also at the time of regularisation, (c) the reservation policy as applicable ought to be borne in mind and (d) no relaxation in the prescribed criteria was permissible.

In our view, the Notifications dated 07.07.2014 seek to regularise the engagement of such ad hoc employees, who were not initially engaged through the process of advertisement nor after facing any interview. Such stipulations are not found in the earlier Notifications dated 16.06.2014 and 18.06.2014, which we have held to be valid. There is no justification placed on record by the State of Haryana as to why services of such ad hoc employees, who had not been engaged on the basis of any advertisement or interview were sought to be regularised, that too by taking into consideration a future cut-off date of 31.12.2018. **The claim of being engaged sans an advertisement itself gives rise to doubts as regards the manner of engagement. Absence of any record whatsoever of the manner of engagement does not inspire any confidence in such process. That such ad hoc employee has not faced any interview is another relevant feature. Further, there does not appear to be any rational basis for fixing a future cut-off date, which is beyond four years from the date of the Notifications. This would indicate that even when it was possible to initiate a process of regular recruitment after issuance of the Notifications dated 07.07.2014, by virtue of the impugned Notifications, number of posts which could have been filled in through regular recruitment were not liable to be advertised. The intent was to accommodate such ad hoc employees, who came to be engaged, albeit temporarily, in the absence of any public advertisement or interview. We see no justifiable reason to uphold the validity of the two Notifications dated 07.07.2014 since they intend to regularise the services of such ad hoc employees, who were engaged without any advertisement and without being interviewed.** To that extent, the impugned judgment of the High Court holding the Notifications dated 07.07.2014 to be arbitrary and illegal does not deserve to be interfered with.

22. We may indicate that we have not examined the contention raised by the appellants based on Article 162 of the Constitution of India and the permissibility of exercising executive powers in such matters. This is for the reason that the High Court has not struck down the Notifications on that count. It is, therefore, not necessary for us to go into the said aspect.”

(Emphasis added)



8.2. Highlighting the importance of issuing an advertisement before engaging someone in public employment, a two-Judge bench of the Hon'ble Supreme Court in *State of Orissa and another vs. Mamata Mohanty*(2011) 3 SCC 436, speaking through Dr. Justice B.S Chauhan, held as follows:

“APPOINTMENT/EMPLOYMENT WITHOUT ADVERTISEMENT:

18. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words **there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.** Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: *Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors.*, 1992(1) S.C.T. 425 : AIR 1992 Supreme Court 789.; *State of Haryana & Ors. v. Piara Singh & Ors.*, 1992(3) S.C.T. 201 : AIR 1992 Supreme Court 2130.; *Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors.*, (1996) 6 SCC 216.; *Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors.*, 1998(1) S.C.T. 533 : AIR 1998 Supreme Court 331.; *Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors.*, 2005(2) S.C.T. 663 : AIR 2005 Supreme Court 2103.; *National Fertilizers Ltd. & Ors. v. Somvir Singh*, AIR 2006 Supreme Court 2319.; *Telecom District Manager & Ors. v. Keshab Deb*, 2008(4) S.C.T. 32 : 2008(5) R.A.J. 588 : (2008) 8 SCC 402.; *State of Bihar v. Upendra Narayan Singh & Ors.*, 2011(1) S.C.T. 208 : (2009) 5 SCC 65.; and *State of Madhya Pradesh & Anr. v. Mohd. Ibrahim*, (2009) 15 SCC 214).

19. **Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates.** If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person



*employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. **The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.***

(Emphasis added)

8.3. In *K.Jayaram (supra)*, a two-Judge bench of the Hon'ble Supreme Court, made the following observations:

“8. From the facts discussed above, it is clear that the appellant had no direct connection with the actual persons who were employed by the contractor, i.e., the respondents. The obligation and responsibility of the appellant was to pay to the contractor the amount which had been contracted and agreed to between the appellant and the contractor, and the responsibility then was that of the contractor to ensure payment of wages and other emoluments as per the terms of the contract to the persons who were actually sent by the contractor to the appellant for performing various types of job.

9. The Court would pause here to indicate that it is not anybody's case that the mode of employment through a contractor itself was illegal or there was any illegality in the terms and conditions of the contract so as to make it ultra vires any constitutional provision or to make it discriminatory, and further there has been no challenge to such contract or any of the terms stipulated in the contract. Another issue on facts, which has been addressed by learned counsel for the respondents is that the respondents could not have been exploited by the parties and the fact that they were the same persons being sent, though through different contractors itself shows that the relationship was direct and only a sham camouflage was created; that of a contractor being the intermediary. To this, in our considered view, the answer may not be in clear black and white terms and is still a grey area for the reason that even if the respondents were the same persons who actually worked for the appellant, there can be instances where the new contractor, to maintain continuity and to ensure that there is no complaint from the employer, the appellant in the present case, continues with the same persons who were already employed and were working with the appellant. Thus, there is argument for and against such stand, which we will not dwell on any further. Another issue which has been flagged by learned senior counsel for the respondents is that the respondents being in the position they are, and the relief given being the minimum of the time scale of the pay attached to the regular post cannot be termed as giving them something which was not due or something excessive, for ultimately they also have



a family to support and they are also performing the job which is performed by people on the regular establishment. We have absolutely no doubt in our mind that such issue raised by learned senior counsel is of relevance, but the Court feels that the mode of contractual employment, that too, by a contractor and not directly by the employer will have to be seen in a different light in the eyes of law. **If all such distinctions between a regular employee and such contractual employees is not made, then the basic concept of hiring through various modes and in different capacity would lose its purpose and sanctity and ultimately everybody would be getting exactly the same benefit. This cannot be permitted in law for the reason that employment under a State entity is a public asset and every citizen of the country has a right to apply for it. In a regular employment, directly made by the said State entity, there are safeguards to ensure that the system of employment/engagement is transparent and fulfills a minimum criteria and is open to all eligible persons and a mode/procedure is adopted for ultimately choosing the right person. When employees/workmen are taken through a contractor, it is the absolute discretion of the contractor as to whom and through which mode he would choose such persons to be sent to the principal. This is where the difference lies, which is a very valid distinction in law.** The reason why there are safeguards in regular appointment is that there should not be any favoritism or other extraneous consideration where persons, only on merit, are recruited through a fully transparent procedure known in law. If the persons who are employed through a contractor, and have come to work, are given equal benefit and status as a regular employee, it would amount to giving premium and sanction to a process which is totally arbitrary as there is no mode prescribed in any contract as to how the contractor would employ or choose the persons who are to be sent, except for the basic qualification, i.e., knowledge in the field for which they are required. The judgment/order relied upon by learned counsel for the appellant aptly covers the field in the present case. The judgment cited by learned senior counsel for the respondents is basically different on facts for the reason that there the contractual employment was directly by the principal and in that background contractual workers have been regularized.”

(Emphasis added)

9. Thus, the cumulative effect of ***Uma Devi(supra)***, ***Mamata Mohanty (supra)*** and ***K.Jayaram (supra)*** is that the State or its instrumentalities cannot offer public employment without engaging in a transparent process that favours meritocracy, lest it may be construed as backdoor entry. On that note, advertng to the facts of the present case, the



petitioners were appointed in furtherance of duly issued advertisements (Annexure A-1 colly). The letters (Annexure A-1 colly) exchanged between M/s S.S. Service Providers reflects that permission was granted by Khalsa Senior Secondary School, Patiala to allow use of the school premises to conduct a written test for recruiting clerical staff for respondent-PEPSU on 01.12.2013. Further, a type test was conducted for the posts of Data Entry Operator-cum-Clerk, Assistant Cashier and Clerk at Thapar University, Patiala on 19.06.2017. Pursuant to the same, a merit list was prepared and the eligible candidates were invited for counselling. As a matter of fact, the medical fee of Rs.100/- paid by petitioner-Rohi Ram was deposited in the account of respondent-PEPSU, as also discernible from the receipt issued in the name of the Managing Director thereof. Further still, the petitioners were engaged against sanctioned posts and possessed the requisite qualifications to be considered for regular appointment to the same. Therefore, clearly, the petitioners were recruited by engaging in a transparent process, initiated in pursuance of an advertisement, and as such, their regularization will not fall foul of the ratio culled out in *Uma Devi (supra)*.

10. Outsourcing cannot be allowed to metamorphose into a convenient veil to sidestep fair engagement practices. Where the principal employer exercises control and supervision over the manner of work, and the worker's livelihood is substantially dependent on the principal employer, the Courts must endeavour to look beyond the façade by lifting the veil created by the intermediaries and declare the principal employer as the employer in fact.



11. Lastly, it is not a case where the petitioners were picked up from the road and granted public employment. Rather, advertisements were issued for initiation of a selection process on the basis of specific eligibility criteria, which was followed by the test and preparation of a merit list. In this context, this Court is of the considered opinion that the continuous engagement of the petitioners, for work that bears a perennial nature, begs the inference that the respondent-PEPSU is attempting to escape its liability by confining the rights of the petitioners to that of an outsourced employee. The element of control and supervision exercised by respondent-PEPSU is clearly discernible and thus, the outsourcing agency becomes merely a conduit. As such, this Court finds it apposite to pierce through the veil of the sham contract between the petitioners and M/s S.S. Service Providers, the intermediary agency, and hold that the respondent-PEPSU is the real employer of the petitioners. Reliance in this regard may also be placed on the judgment rendered by a Constitutional Bench of the Hon'ble Supreme Court in *Steel Authority of India Ltd. vs. National Union Water Front Workers (2001) 7 SCC 1*.

- **The benefit of this judgment is extended to all similarly situated contractual outsourced employee serving the respondent-PEPSU**

12. It must be clarified that the present judgment shall operate as a judgment *in rem*, intended to extend the benefit to all similarly situated persons irrespective of whether they have approached this Court or not. Reference in this regard may be made to the judgment rendered by a two-Judge Bench of the



Hon'ble Supreme Court in *State of Uttar Pradesh vs. Arvind Kumar*

Srivastava, 2014(4) SCT 648, wherein the following was held:

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) **Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.** This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fencesitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) **However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like** (see *K.C. Sharma & Ors. v. Union of India (supra)*). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

(emphasis added)



CONCLUSION

13. In view of the discussion above, all the aforementioned petitions are allowed in the following manner:

(i) The respondents are directed to regularize the services of the petitioners within a period of six weeks from today. If no order of regularization is passed within the said period, they shall be deemed to be regularized. The petitioners shall be entitled to counting of past service and other benefits as per judgments rendered by this Court in ***Harbans Lal vs. State of Punjab, CWP No.2371 of 2010*** and ***State of Haryana and others vs. Jai Bhagwan, LPA No.1892 of 2019***.

(ii) In cases where a petitioner has been engaged without undergoing a transparent selection process pursuant to an advertisement or public notice, he/she shall not be entitled to regularization. Nonetheless, in view of their long and continuous service, the respondents are directed to grant such petitioners the minimum of the pay scale applicable to the post held by him/her, in terms of the judgment of the Hon'ble Supreme Court in ***State of Punjab and others vs. Jagjit Singh and others, 2016 INSC 993***.

14. A photo copy of this order be placed on the file of connected cases.

(HARPREET SINGH BRAR)
JUDGE

22.04.2026
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No