2026:UHC:10615-DB

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Special Appeal No. 403 of 2026

State of Uttarakhand and another ..... Appellants

Vs.

Poonam Bahuguna .....Respondent

Presence:
Mr. Rahul Verma, learned Additional Advocate General for the State.
Mr. M. C. Pant, Mr. D.N. Sharma, learned counsel along with Ms. Manju Bahuguna, learned counsel for the respondent.

Reserved on : 29.10.2026
Delivered on : 17.11.2026

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

(Per: Hon'ble Siddhartha Sah, J.)

The present Special Appeal has been preferred against the judgment and order dated 24.08.2026 passed by the learned Single Judge in Writ Petition No. 2121 (S/S) of 2023, *Poonam Bahuguna Vs. State of Uttarakhand & Anr.*, whereby the writ petition was allowed and respondent no. 2, i.e., appellant no. 2 herein, was further directed to consider the case of the petitioner for Regularisation as a Junior Assistant in the Library or in any Class-III post in the office of the Advocate General.

2. Before adverting to the respective submissions of learned counsel for the parties, the facts of the case are being narrated briefly in order to appreciate the case of the respective parties.

3. The writ petition was filed by the petitioner/respondent herein against the State and the Advocate General with the averments that petitioner was engaged as a contractual employee with respondent no.2 in the year 2007, and since then, she has been regularly working as such without any break in the library of respondent no.2. Petitioner was paid the minimum of pay scale, as admissible to a regular Class-III employee with effect from the year 2010. However, suddenly, vide order dated 16.10.2023, respondents tried to change the condition and nature of service of petitioner and asked her to continue as an outsource employee through an outsourcing agency. The said order was challenged by petitioner in the writ petition on the ground that she has been working with respondent no.2 since 2007, and is also getting minimum of pay scale w.e.f. 2010, therefore, the impugned order is illegal, arbitrary and the same may be quashed. Petitioner further prayed for her Regularisation on the post of Assistant Librarian since 2007.

4. Respondent No. 2 has filed its counter-affidavit, contending inter-alia that the petitioner had moved an application on 08.12.2009, on the basis of which, she was engaged as a contractual employee. However, it is not denied that petitioner is working regularly and is being paid minimum of scale of the post of regular Junior Assistant. It is further stated in the counter affidavit that Regularisation of the service of petitioner is under process, as informed by Law Secretary vide its order dated 07.07.2023.

5. The State of Uttarakhand has filed its counter-affidavit, inter-alia contending that though 122 posts in different cadres is sanctioned in the office of respondent no.2 in which there is no post of Assistant Librarian. It is further clarified that even under the Rules known as ‘the Uttarakhand Advocate General Office

Establishment (Service of Employees) Rules, 2013' (hereinafter referred to as "the Establishment Rules, 2013"), there is no post of Assistant Librarian sanctioned in the office of respondent no.2.

6. The petitioner/respondent herein filed a rejoinder affidavit, reiterating the averments made in the writ petition and further contended that petitioner is working in the office of respondent no.2 in Library as Junior Assistant (Contract) since July, 2007, as is reflected from the noting sheet by the Advocate General, which is part of Annexure No.RA1 to the rejoinder affidavit.

7. The matter was thereafter heard by the learned Single Judge who came to the conclusion that since the petitioner has been working with respondent no.2 in the library on the post of Junior Assistant as admitted by respondent no.2 himself since July 2007, the petitioner deserves to be regularized on the said post under Uttarakhand Regularisation of Daily Wages, Work charged, Contract, Fixed Pay, Part Time, Adhoc Employees Appointment Rules, 2013 (hereinafter referred to as "Regularisation Rules of 2013") which were subsequently amended in 2025. The Ld. Single Judge also inferred that the Petitioner has already completed 10 years required service on 04.12.2018 on the cut-off date as per Regularisation Rules, 2013, as amended in 2025. Petitioner has been continuously working in the office of respondent no.2 and is also getting minimum of pay scale of Junior Assistant for the last 16 years. Petitioner has spent all her life and youth in the service of respondent no.2, and at present, relief of Regularisation cannot be denied to her. The respondents cannot be permitted to exploit the youth and education of petitioner in such a manner by keeping her on contract for a long period of time without any reason. The work

discharged by petitioner is perennial in nature as reflected from her long engagement and her services are required too.

8. The Ld. Single Judge also observed that the argument advanced by respondents (Appellants herein) that the Advocate General is not empowered to make order of Regularisation does not hold any water as under the Rules known as 'the Establishment Rules, 2013', the Advocate General is the appointing authority so far as the post of Junior Assistant is concerned. The petitioner deserves to be regularized under the Regularisation Rules of 2013 as amended in the year 2025 in which the petitioner falls under the bracket of cut-off date i.e. 04.12.2018 and on the said premise proceeded to allow the petition vide impugned judgment and order dated 24th August 2026, and thereby quashed the impugned order dated 16.10.2023 along with notice dated 31.10.2023 qua petitioner. Respondent no.2 was directed to consider the case of petitioner for Regularisation as Junior Assistant in Library or any Class-III post in office of Advocate General, within two months from the date of production of a certified copy of the order.

9. Aggrieved by the aforesaid judgment and order dated 24.08.2026 passed in the writ petition, the present special appeal has been filed by the appellants.

10. Assailing the aforesaid judgment and order dated 24.08.2026, learned Additional Advocate General for the State would submit that the Advocate General has no power to regularize Group-C posts. The Uttarakhand Subordinate Service Selection Commission (UKSSSC) is the authority competent to conduct recruitment examinations, and the role of the Advocate General is limited to granting approval for appointments. It is further

submitted by the learned Additional Advocate General, that, by virtue of a Government Order dated 25th April 2025, the State Government has banned further recruitments.

11. It is the further canvassed by the learned Additional Advocate General, that the petitioner/respondent herein has herself admitted that she has been serving in the Advocate General's office since 2009. It is submitted that it is difficult for the Advocate General to comply with the order dated 24th August 2026. It is further submitted that the Advocate General has been wrongly impleaded as a party, whereas the State alone ought to have been impleaded as a party.

12. Learned Additional Advocate General has placed reliance on the Constitution Bench judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors., reported in (2006) 4 SCC 1, concerning Regularisation, and has referred to paragraphs 43 and 45, thereof, which are extracted hereinbelow for ready reference.

> *"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of*

their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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

and stressed merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance.

13. Learned Additional Advocate General would further submit that the subsequent judgments of the Hon'ble Supreme Court in Jaggo v. Union of India & Ors., reported in 2024 SCC OnLine SC 3826, and Dharam Singh & Ors. vs. State of U.P. & Anr., reported in 2025 SCC OnLine SC 1735, cannot be said to be good law in view of the Constitution Bench judgment of the Hon'ble Supreme Court in State of Karnataka v. Umadevi (3). Further reliance has been placed on the judgment of the Hon'ble Supreme Court in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., reported in (2005) 2 SCC 673, to submit that the Constitution Bench has ruled that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges following the view of the law, what has been declared by this Court in Pradip Chandra Parija & Ors. case [(2002) 1 SCC 1] clinches the issue.

14. It is further submitted that the post for which the petitioner is seeking Regularisation falls within the purview of UKSSSC and that the petitioner has not been appointed against any substantive vacancy. The petitioner first applied for engagement as a contractual employee in the year 2009. In the year 2024, the Advocate General forwarded her representation seeking

Regularisation of her services; however, the State Government denied her request for Regularisation.

15. It is submitted that even if certain grounds were not raised before the Writ Court, the same may be raised in a Special Appeal. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of Bongaigaon Refinery & Petrochemicals Ltd. & Ors. vs. Girish Chandra Sarma, reported in (2007) 7 SCC 206, with particular reference to paragraph 22, which is extracted hereinbelow for ready reference:

> *"22. The learned Additional Solicitor General has submitted that since learned counsel for the respondent-writ petitioner has already abandoned the plea of perversity i.e. that the finding is perverse, the same is not open for learned counsel for the respondent-writ petitioner to press again before the Division Bench of the High Court. Since the writ appeal is in continuation of the original order passed in the writ jurisdiction by the learned Single Judge, it cannot operate as an estoppel against learned counsel for the respondent to press the same. If the finding recorded by the inquiring officer is not sound and it relates to perversity then the appellate court in writ appeal cannot estop the counsel from raising the same. More so, the Division Bench after considering the matter has found that the whole approach was perverse because the respondent alone has been made a scapegoat. When the decision of all the three Committees was unanimous, then to take one and put the entire blame on him is definitely perverse approach and the court cannot stand to the technicalities so as to defeat the ends of justice. Thus, the submission of the learned Additional Solicitor General has no merit."*

16. Per contra, learned counsel for the respondent/writ petitioner submits that the argument of the appellants that the Advocate General is the appointing authority is bereft of any force. He has referred to the Establishment Rules, 2013, specifically Rules 3(a), 14, 15, and 18 of the said Rules, which are being extracted for ready reference:-

> *"**Definitions***
> *Rule 3 - In these rules, unless there is anything repugnant in the subject or content -*
> *(a) Appointing Authority' means the Advocate General of the State of the Uttarakhand;*
>
> ***Determination of vacancies***

Rule 14 - The Appointing Authority shall determine the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and other categories to the State of Uttarakhand under- rule 6.

Constitution of Departmental Selection Committee

Rule 15- (1) There shall be constituted a Selection Committee for the purpose of recruitment to the posts of Stenographer, Junior Assistant, Typist/Ruteen Grade clerk and Assistant Accountant comprises as follows :--

(a) Appointing Authority - Chairman:
(b) An officer nominated by the Appointing Authority -Member; and
(c) An officer nominated by the Head of the Department – Member.

(2) If the Chairman is not from Scheduled Castes/ Scheduled Tribes, if the Chairman is from Scheduled Castes/ Scheduled Tribes, than the Chairman shall nominate any officer other than Scheduled Castes. Scheduled Tribes or Other Backward Classes.

(3) If the Chairman is not from Other Backward Classes than any Officer form Other Backward Classes nominated by the Chairman. if the Chairman is from Other Backward Classes, then the Chairman shall nominate any officer other than Scheduled Caste. Schedule Tribes or Other Backward Classes.

Procedure of direct recruitment through the Commission

Rule 18. Recruitment for the posts of Librarian, Addition Private Secretary. Review Officers, Assistant Review Officers and Translator shall be made as follows through Public Service Commission.

(1) Application for permission to appear in the competitive examination shall be called by the Commission in the prescribed form.

(2) No candidate shall be admitted to the examination unless he holds a certificate of admission, issued by the Commission.

(3) After the results of the written examination has been received and tabulated, the Commission shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled castes, Scheduled Tribes and others under Rule 6. The Commission shall prepare in list of candidates in order of their proficiency as disclosed by the aggregate of marks obtained by each candidate at the written examination and recommend such number of candidates as they considered fit for appointment. If two or more candidates obtain equal marks, the name of the candidate who is senior in age shall be placed higher in the list. The Commission shall forward a list to the Appointing Authority."

17. Learned counsel for the respondent further submitted that the Advocate General is the appointing authority for the establishment of the Advocate General's office. He placed reliance on an Office Memorandum dated 22nd February 2007, which contains a list of employees whose services were regularized by the office of the Advocate General, Uttarakhand.

18. Learned counsel also placed reliance on the Establishment Rules, 2013, specifically Rules 2, 4, 5 and 8 thereof, which are extracted hereinbelow for ready reference:-

(2) Status of the Service	*The Uttarakhand Advocate General Office Establishment Service comprising group "A", "B", "C" and "D" posts.*
(4) Cadre of Service	*(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Government from time to time* *(2) The strength of the service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given in the Appendix 'A`:* *Provide that –* *(a) the Appointing Authority may leave unfilled or the Governor may hold in abeyance any vacant posts, without thereby entitling any person to compensation;* *(b) the Governor may create such additional permanent or temporary posts as he may consider proper.*
PART – III *RECRUITMENT*	
(5) Source of Recruitment	*Recruitment to the service shall be made from the following sources:* *(1) Librarian - By direct recruitment* *(2) Senior Suit Superintendent - By promotion subject to the rejection of unfit on the basis of seniority through selection committee amongst from the substantively appointed Suit Superintendent who have completed at least three years service as such on the first of the year day recruitment.* *(3) Suit Superintendent - By promotion subject to the rejection of unfit on the basis of seniority through selection committee amongst from the substantively appointed Section Officers who have completed at least five years service as such on the first day of the recruitment.* *(4) Section Officers - By promotion subject to the rejection of unfit on the basis of seniority through selection committee amongst from the substantively appointed Reviewing Officers who have completed at least five years service as such on the first day of the year recruitment.* *(5) Private Secretary- By promotion subject to the rejection of unfit on the basis of seniority through selection committee amongst from the substantively appointed Additional Private Secretary who have completed at least five years service as such on the first day of the year of recruitment.* *(6) Additional Private Secretary- By promotion subject to the rejection of unfit on the basis of seniority through selection committee amongst from the substantively appointed Stenographer who have completed at least five years service as such on the first day of the year recruitment.* *(7) Reviewing Officers- (1) 50% direct recruitment through Commission. (2) 50% by promotion subject to the rejection of unfit on the basis of seniority through selection committee amongst from the substantively appointed Assistant Reviewing Officers who have completed at least five years service as such on the first day of the year recruitment.* *(8) Assistant Reviewing Officers- (1) 50% direct recruitment through Commission. (2) 50% by*

	promotion subject to the rejection of the unfit on the basis of seniority through selection committee amongst from substantively appointed Junior Assistant/Typist /Ruteen Grade Clerk who have completed at least five years service as such on the first day of the year of recruitment. *(9) Accountant - By promotion subject to the rejection of unfit on the basis of seniority through selection committee amongst from the substantively appointed Assistant Accountant who have completed at least three years service as such on passed departmental examination.* *(10) Assistant Accountant- By direct recruitment through departmental selection committee.* *(11) Stenographer- By direct recruitment through departmental selection committee.* *(12) Junior Assistant- (1) 70% by direct recruitment through departmental selection committee. (2)15% by promotion amongst from the substantively appointed group 'D' posts holders, who have passed High School examination and who have five years service as such by selection, which a objective type examination of 50 marks to be held. (3) 10% by promotion amongst from the substantively appointed group 'D' posts holders, who have passed Intermediate examination and who have five years service as such by selection, which a objective type examination of 50 marks to be held. (4) 5% vacancies by promotion amongst such Vehicle Drivers who have passed High School and higher examination by the Appointing Authority.* *(13) Typist/Ruteen Grade clerk-. (A) 1-70% by direct recruitment 2- 25% amongst group "D" employees in which 15% for high school examination passed and 10% for Intermediate examination passed, such employees which have complete five years service as such, through selection, a objective types examination to be conducted, comprises 50 marks,* *Provided that against the identified posts for high school passed candidates, in case non- avaibility of the candidates than the said posts shall be field by promotion amongst higher examination candidates. (B) 5% vacancies shall be field by promotion amongst such drivers from the high school examination passed or higher examination passed by Appointing Authority.* *Note:- Group 'D' and driver who have completed five years regular service shall be come into the field of the legibility. For promotion of the group 'D' and driver, the selection on the posts of reserve vacancies. the recruitment shall be made by a examination on the basis of merit. The examination have only one paper which shall be comprises objective type question in Hindi, General Knowledge, General Studies. The written examination shall be held with 40 marks and 10 marks for character roll of legible employee. In this way the total examination marks shall be of 100. In case where the recruitment to be in the cadre of typist than in addition of above a typing examination of 50 marks shall also be conducted and below the typing speed of 4000 key depression per hour in Hindi shall not be legible. The selection examination shall be comprises total 100 marks.*

	(14) Translator- By direct recruitment through Commission.
(8)Academic Qualification 8.	*A candidate must have following qualifications for appointment on the various posts in the service :-*
Post	*Qualifications*
(1) Librarian -	*Bachelor Degree from any University establish by Law. Post graduation degree in library science from any University establish by Law. Diploma of one year in computer operation should be necessary.*
(2) Reviewing Officers -	*Bachelor Degree from any University establish by Law or any qualification recognized by the Government equivalent there to.*
(3) Assistant Reviewing Officers -	*Bachelor Degree from any University establish by Law or any qualification recognized by the Government equivalent there to. Minimum 4000 key depression per hour speed in Hindi typing on computer be necessary. Such candidate who can type in English on computer to be given preference.*
(4) Additional Private Secretary -	*Bachelor Degree from any University establish by Law or any qualification recognized by the Government equivalent there to. The speed must be 100 words in English shorthand and 6000 Key depression in English typing. Minimum 80 words per minute in shorthand in Hindi and 4000 key depression per hour speed in Hindi typing on computer be necessary.*
(5) Assistant Accountant -	*B.com or post graduate diploma in accountancy and 'O' level computer operation which the speed 5000 key depression per hour should be necessary in the computer.*
(6) Translator bilingual (Hindi and English) -	*Bachelor Degree from any University establish by Law. English and Hindi, to be in the level of Intermediate and Graduation. Such candidates who is Law Graduated to be given preference. The knowledge computer operation should be must*
(7) Stenographer -	*For the direct recruitment to the posts it is the necessary that the candidate passed Intermediate examination from Uttarakhand secondary education council or examination passed from the recognized by State Government equivalent there to and kept knowledge of computer operation and minimum 4000 key depression per hour speed and 100 words per minute in English shorthand and 80 words per minute in Hindi shorthand.*
(8) Junior Assistant -	*For the direct recruitment to the posts it is necessary that the candidate passed Intermediate examination from the Uttarakhand secondary education council or examination passed from the recognized by State Government equivalent there to. Minimum 4000 key depression per hour speed or English/Hindi typing on computer must be necessary.*
(9) Typist/Ruteen Grade clerk -	*For the direct recruitment/promotion to the posts of the typist/Ruteen Grade clerk it is necessary that the candidate passed Intermediate examination from the Uttarakhand secondary education council or examination passed from the recognized by State Government equivalent there to. Minimum 4000 key depression per hour speed or English/Hindi typing on computer must be necessary.*
Compulsory Qualification-	*(2) Regarding the said posts of direct recruitment the candidate must be registered in the any employment office of the Uttarakhand State.*

19. Learned counsel for the respondent submits that the Regularisation Rules of 2013 have also been forwarded to the Advocate General's office. The contention raised by learned counsel

for the appellants that the Government has banned recruitment to Group-C posts was countered by submitting that the Establishment Rules, 2013 were framed under Article 309 of the Constitution of India and would override the Government Order dated 25th April 2025.

20. Learned counsel for the respondent has placed reliance on the judgment dated 22nd February 2024 passed by a Coordinate Bench of this Court in Writ Petition (S/B) No. 616 of 2018 (Narendra Singh and Another v. State of Uttarakhand & Ors.), wherein it was held that the amendments to the Establishment Rules, 2013 would not come into play, inasmuch as an employee would be entitled to Regularisation upon completing 10 years of service as on 22nd February 2024. Reliance has been placed on paragraphs 6 and 7 of the said judgment, which are extracted hereinbelow for ready reference:-

> *"6. In the present case, there was an interim order of stay dated 04.12.2018, that no orders of Regularisation will be passed by the State Government, under the 2013 Rules. Hence, since 04.12.2018 no Regularisation orders have been passed. All those persons, who have been regularized as per the 2013 Rules before 04.12.2018, have worked for more than 13-14 years now. With respect to other candidates, who have to be regularized now, they can be regularized, as per the 2013 Rules, by taking into consideration 10 years' service, instead of 05 years, as of now.*
> *7. Accordingly, the 2013 Rules are being modified that, after 04.12.2018, 10 years' period will be taken into consideration for Regularisation."*

21. Further reliance has been placed on the judgment of the Hon'ble Supreme Court in Sukhendu Bhattacharjee & Others v. State of Assam & Others, reported in (2026) SCC OnLine SC 909, with particular reference to paragraphs 67, 70, 71, 73, and 74 thereof, which are extracted hereinbelow for ready reference:

> *67. The conduct of the State must also be examined in light of its status as a model employer. The State is under a higher constitutional obligation to ensure that its actions are just, reasonable and non-arbitrary. Recently, this Court in Bhola Nath v. State of Jharkhand13*

reiterated that the State, as a model employer, bears a heightened constitutional obligation in the discharge of its functions. It must act with probity, fairness and candour, and cannot cloud the disputes involving its employees under narrow technical grounds divorced from their broader constitutional context. A model employer is expected to uphold the dignity of its employees more so who are at the lowest pedestal of the hierarchy and to avoid exploiting their vulnerability or precarious position. This obligation flows directly from the Constitution and is not discretionary. Constantly giving undertakings before a constitutional Court and thereafter resiling from them does not comport with the standards expected of a model employer. An undertaking recorded by a Court is not a casual statement, but is a solemn representation on the basis of which judicial orders are passed. The State cannot approbate and reprobate. It cannot, on the one hand, secure time and indulgence from the Court on the assurance that a policy will be implemented and, on the other, avoid implementation by citing precedents that were already in existence at the time the undertakings were furnished.

70. The principle laid down in the aforesaid decision applies to the present case as well. The State's own policy decision and subsequent undertakings before the High Court constituted clear representations that the cases of the left-out workers would be duly considered. The State could not thereafter retract from its earlier position in a selective or inconsistent manner.

71. Even otherwise, as correctly observed by the learned Single Judge, there was no requirement for the State to seek permission of the Court to implement its own policy decision. The Full Bench in Jitendra Kalita (supra) had itself observed that any solution to the issue of Regularisation must be undertaken by the State as a policy measure. Regularisation, where permissible in law, is an executive function. It falls within the domain of policy and administration. Courts do not grant prior approval to executive decisions. The role of the Court is confined to judicial review, that is, to examine whether a policy or action is constitutionally valid, fair and reasonable. It is not for the Court to authorise the executive to exercise powers which already vest in it.

73. As regards the contention of Shri Gupta that after the decision in Umadevi (supra) no Regularisation can be effected in respect of employees who were not appointed against duly sanctioned posts, we are unable to accept such a sweeping proposition in the facts of the present case. The submission proceeds on the premise that Umadevi (supra) lays down an absolute and inflexible embargo against all forms of Regularisation irrespective of the surrounding circumstances. Such an interpretation, in our considered view, does not reflect the true scope and ratio of the decision.

74. This Court in Jaggo (supra), deprecated the tendency of the State to take mechanical shelter under Umadevi (supra) to deny relief to employees who had been performing work of a permanent and essential nature for long years. This Court observed as follows:—

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

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

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 Regularisation of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in Uma Devi **(supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair Regularisation**. In a recent judgment of this Court in *Vinod Kumar* v. *Union of India*, it was held that held that procedural formalities cannot be used to deny Regularisation of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee.

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

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

• **Misuse of "Temporary" Labels**: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of

regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

• **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

• **Lack of Career Progression**: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

• **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

• **Denial of Basic Rights and Benefits**: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in Uma Devi **(supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long- serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for Regularisation 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 Regularisation exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where Regularisation is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.**

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. **Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.**"

22. It is also submitted in the counter-affidavit filed by the State that there is no contention that the post of Junior Assistant was not vacant on the relevant date.

23. Lastly, learned Additional Advocate General for the State submits that, if this Court is not inclined to interfere with the impugned judgment, the judgment should, at the very least, be modified to the extent that directions be issued to the State Government instead of the Advocate General, and the State should be treated as the appointing authority rather than the Advocate General.

24. Having heard the learned counsel for the parties and going through the record the questions that fall for determination in this Special Appeal are (1) Whether the learned Advocate General is the appointing authority under the Establishment Rules, 2013? (2) Whether the petitioner (respondent herein) had been working in the office of learned Advocate General since 2007 or 2009? and (3) Whether the petitioner (respondent herein) is entitled for the benefit of Regularisation Rules of 2013?

25. The first question for determination is that whether the learned Advocate General is the appointing authority of the writ petitioner/respondent herein. On this issue on one hand the learned Additional Advocate General would very vehemently argue that the State Government is the appointing authority of the writ petitioner and it is only the State Government which can regularize the services of the writ petitioner. On the other hand the learned counsel for the writ petitioner/respondent herein would submit that Rule 3 (a) of the Establishment Rules, 2013 clearly state that appointing Authority means the Advocate General of the State of

Uttarakhand. He would further submit that as per Rule 14 it is Appointing Authority (Advocate General) who shall determine the number of vacancies to be filled and as per Rule 15. Inter-alia Junior Assistant has to be appointed through a Departmental Selection Committee. The Learned AAG could not point out any other Rule which would show that the Advocate General is not the appointing authority of the writ petitioner/respondent herein. Thus we come to the conclusion that the Advocate General is the appointing authority for the post of junior assistant under the Establishment Rules, 2013. Also Office Memorandum dated 22/02/2007 clearly reveals Advocate General to be the Appointing Authority.

26. So far as the question as to since when the petitioner had been working in the office of Advocate General is concerned it needs to be noted that while on one hand it is the petitioner's case that she has been working in the office of Advocate General since the year 2007, whereas on the other hand it is the case of the appellants that the petitioner had been working in the office of the Advocate General since the year 2009. The learned Additional Advocate General would make reference to applications of petitioner (respondent herein) dated 26/07/2017 and 09/10/2017 wherein it is stated she has been working in the Advocate's General office since 2009. While learned counsel for the writ petitioner/respondent herein would refer to the file noting of the learned Advocate General himself dated 20/07/2018 which categorically refers to the writ petitioner working since 2007. The file noting of the learned Advocate General is part of Annexure No. 1 of the rejoinder affidavit. Learned counsel for the writ petitioner/respondent herein had also drawn the attention of the Court to other documents annexed as Annexure No. RA1 to the rejoinder affidavit of the writ petitioner, wherein writ petitioner has

signed Library Register since the year 2007. Learned AAG could not deny that the Library Register contains signature of writ petitioner/respondent herein since the year 2007. The submissions as made by the learned counsel for the writ petitioner/respondent herein that the writ petitioner/respondent herein had been working in the office of the Advocate General since the year 2007 are thus clearly proved and established from the file noting of the Advocate General as also further corroborated from the Library Register of the Advocate General. Therefore, the view taken by the learned Single Judge that the writ petitioner/respondent has been working since the year 2007 is based on record and we concur with the same.

27. The last crucial question which falls for determination is whether the writ petitioner/respondent herein is entitled for the benefit of Regularisation Rules of 2013? On this issue learned Additional Advocate General has argued that writ petitioner/respondent is not entitled to Regularisation. Learned Additional Advocate General has firstly relied upon the judgment of Hon'ble Supreme Court in the case of Uma Devi (supra) while referring to para No. 43 and 45 thereof and would submit that a temporary or casual employee cannot be absorbed or made permanent, merely on the strength of long continuous service. He would further submit that the State Government has banned fresh recruitments in the year 2025 vide G.O. dated 25/04/2025. It is further submitted by the learned Additional Advocate General that recent judgments of two Hon'ble Judges of Hon'ble Supreme Court in the case of Jaggo, etc cannot be relied upon in view of judgment in the case of Dawordi Bohra Community (supra). It was further submitted that the petitioner has not been appointed against any substantive vacancy. On the other hand learned counsel for the writ petitioner would submit that Regularisation Rules of 2013 have

been forwarded inter-alia to the Advocate General's office. It is also contended that since Regularisation Rules of 2013 having been framed under Article 309 of the Constitution of India they would override the Government Order dated 25/04/2025. Reliance has further been placed on the judgment of a Co-ordinate Bench of this Court dated 22/02/2024 rendered in the case of Narendra Singh vs. State of Uttarakhand to contend that an employee would be entitled to Regularisation upon completing 10 years of service as on 22/02/2024. Reliance has also been placed on the recent judgment of the Hon'ble Supreme Court in the case of Sukhendu Bhattacharjee (supra) to contend that Hon'ble Supreme Court has been unable to accept a sweeping proposition that after the decision in Umadevi case no Regularisation can be effected in respect of employees who were not appointed against duly sanctioned posts. It was also submitted on behalf of the writ petitioner/respondent herein that in the counter affidavit of the State it is not their contention that post of Junior Assistant was not vacant on the relevant date. From the rival submissions of the learned counsel for the parties it is clear that the Regularisation Rules of 2013 are applicable in the office of the Advocate General Uttarakhand. The submission of learned Additional Advocate General that long continuous service on adhoc/temporary service is not ground for Regularisation is itself contradicted by para 53 of the judgment in the case of Umadevi (supra) wherein the Hon'ble Supreme Court had provided for steps to regularize services of irregular appointed employees who had worked for ten years or more but without the intervention of the orders of Courts or Tribunals. Thus the other judgments cited by learned Additional Advocate General do not come to the rescue of the appellants. In the present case the State Government has framed the Regularisation Rules of 2013 in

consonance with Umadevi case and the writ petitioner/ respondent herein is thus eligible for Regularisation under said Regularisation Rules of 2013 and has also rendered more than 10 years services in the year 2024 as per judgment of co-ordinate Bench in the case of Narendra Singh and also in view of judgment of Hon'ble Supreme Court in case of Sukhendu Bhatacharjee (supra). Thus we come to the conclusion that the writ petitioner/respondent herein is entitled to the benefit of Regularisation under the Regularisation Rules of 2013. Therefore the learned Single Judge did not err by granting benefit of Regularisation Rules of 2013 to the writ petitioner/respondent.

28. Since all the three points for determination are answered against the appellants hence we do not find any ground to interfere with the judgment of the learned Single Judge and the Special Appeal fails and deserves to be dismissed.

29. The Special Appeal is hereby dismissed.

(Siddhartha Sah, J.)
17.11.2026

(Ravindra Maithani, J.)
17.11.2026

BS