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	Decided on :	11.06.2026		
	Duration :	09	04	21
Yrs.		Mths.	Days	

Before the Hon'ble Member and Presiding Officer of Industrial
Tribunal at Rajkot, (Camp: Junagadh).

Ref. (I. T.) No.02/2019.

1. District Development Officer,
District Panchayat, Gir-Somnath,
At: Veraval, District: Gir-Somnath.
2. Taluka Development Officer,
Taluka Panchayat, Una,
District: Gir-Somnath.

:: First Parties / opponents ::

V/S

1. The Secretary,
Junagadh Jilla Mazdoor Sangh,
(Bharatiya Mazdoor Sangh),
Address: 7, Pandit Dindayal Bhavan,
Opp. of Jayshree Talukies, Junagadh.
Workman:

Premdas K. Chavda,
Residing at: Ambedakar Nagar,
Chamunda Vas, Una,
District: Gir-Somnath.

:: Second Party / applicant ::

Reference under sec.10 of the I. D. Act.

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For First Party No.1 : No appearance.

For First Party No.2 : Ld. advocate Mr. P. A. Lalwani.

For Second Party : Ld. advocate Mr. P. A. Tank.

: Award :

(1). The first party herein are the DDO & TDO of District: Gir-Somnath and the second party is it's employee through the Union. The above first as well as second party for sake of brevity and deciding this industrial dispute are referred as '*the opponents*' and '*the applicant*' respectively.

(2). The present industrial dispute in form of demand was forwarded for judicial decision to this Tribunal by the Labour Commissioner, Gandhinagar, as the conciliation proceedings *vide* No.01/2018 before him could not fructify, *vide* letter no.134 dtd.17.01.2019, as per order no.KHAHMC/40682/5/2/IDR/AJ/287/2018 dtd.17.01.2019 and the exact terms of this reference are as under:

“Whether the employee / workman, named Premdas K.

Chavda should be regularized in his service on completion of 240 days from his joining dt.01.08.2018¹? and he should be paid all the benefits such as pay scale, pay grade fixation, ancillary benefits of salary viz, medical allowance, bonus, leave salary, increments, etc. along with arrears and amount of difference, which are available to regular employees?”

(3). The applicant herein has submitted the statement of claim at Exh.07.

The facts of the statement of claim is encapsulated as under:

The applicant has said that he is performing service as a peon in the establishment of the opponent since dtd.01.08.1986. It is contended that earlier he was terminated from service on dt.04.04.1994 without any fault, so he has preferred Ref. (LCJ) case No.6/1996 before Labour Court, wherein the reference case was allowed and it was ordered to reinstate him with all benefits and back wages, so as such he is performing his duties. The said award of Labour Court has been confirmed. The work of a peon is being taken from him by the opponent and said work is of perennial nature. He is performing continuous service since many years on said post even though the opponent has not regularized him. He has stated that there is no complaint against him nor is his work objectionable even though he is not made permanent. The applicant has stated that he has made several submissions though he is not regularized. His work

1 The date of joining was amended and modified as dt.01.08.1986, as per amendment reference order dtd.09.02.2026 conveyed vide letter No.456 of Labour Commissioner, Gujarat State, Gandhinagar

is good, praiseworthy and satisfactory. He is performing continuous and uninterrupted work and has performed work of more than 240 days in each years so he is entitled for being regularized in his service. The opponent has regularized junior employees to him and he is devoid of said benefits. He has said that the post on which he is performing work is included in the set-up of the opponent and such posts have successively increased so he can be absorbed in the establishment of the opponent. The applicant has contended that he is getting benefits of regular Notification and also Notification dtd.17.10.1988 that of Daulatbhai Parmar Committee. The applicant has thus prayed to grant relief regarding regularization of his service on post of peon on completion of 240 days of service from date of joining i.e. dt.01.08.1986 and to pay him all benefits available to regular employees such as salary, increments, dearness allowance, house rent, bonus, leave benefits, etc. as well as the opponent maintains his service book as well as pay him arrears from the date he is entitled for being regularized in service.

(4). The opponent No.1 has not remained present in this case whereas the opponent No.2 has submitted written reply *vide* Exh.10. The opponent has denied the contentions of the applicant and has stated further that the applicant has to prove that he is performing service since dt.01.08.1986 and they don't have any personal knowledge about the same. It is stated that the applicant was a daily-wager and whenever he requires work he comes for the work. He is not given continuous appointment. The work performed by him was not on the post of set-up and at present he

is performing work as peon on temporary basis in their establishment. It is stated that since the applicant was not performing work with responsibility so he was removed from service. The opponent has admitted that the applicant is performing work of a peon and said work is of perennial nature. It is stated that the applicant is not applying his mind properly in the work and his presence is also irregular. Further since his appointment is done on temporary basis so there is no question of regularizing him in service. It is stated that due to not performing work in proper manner many a times the establishment has to suffer loss and the name of establishment is also spoiled. It is stated that the higher authority also rebuked them due to the work of applicant and many complaints are also received. Thereby, the opponent has prayed to dismiss the case of the applicant with cost.

(5). The following evidence is produced from applicant side.

: Oral Evidence :

1	Exh.19.	Affidavit of chief examination of applicant Premdas K. Chavda .
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: Documentary Evidence :

1	Exh.34.	Award passed in Ref (LCJ) No.6/1996.
2	Exh.35.	Order passed in SCA No.2175/2000.
3	Exh.36.	Presence report dtd.10.04.2000 of the applicant.
4	Exh.28.	Office order dtd.14.05.2000 of the

		opponent No.2.
5	Exh.43.	Order for amendment in joining date of applicant in the terms of reference passed by the appropriate Government.

The applicant side has submitted evidence closure pursis at Exh.22.

(6). The following evidence is produced from opponent side.

: Oral Evidence :

1	Exh.27.	Affidavit of chief examination of witness of opponent No.2 namely Karabhai Punabhai Chavda.
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: Documentary Evidence :

1	Exh.29 to 33.	Contingency bills w.r.t. the applicant from April 2016 to February 2017, March 2018 to December 2021.
2	Exh.38.	Details of sanctioned post of peon.

The applicant side has submitted evidence closure pursis at Exh.39.

(7). The Ld. advocates of the applicant and the opponent No.2 have submitted written arguments respectively, at Exh.40 & 46. These arguments of respective sides along with citation of the

applicant side will be discussed hereinafter at appropriate stage.

(8). Having heard the learned advocates for the respective parties and having gone through the record, this Tribunal finds that three issues falls for consideration for deciding the present industrial dispute.

(1). Whether the establishment of the opponent falls under the scope of the definition of an “industry” of the I. D. Act?

(2). Whether the applicant proves that he is entitled for getting the relief of regularization of his service? If yes, then from when and what relief he is entitled for?

(3). What order?

: The answers to the above issues are as below :

(1). Affirmative.

(2). Affirmative. The applicant is entitled for the relief of regularization of his service. His service is to be regularized on the equivalent post of peon on which he is/was working. His service is to be regularized after completion of 240 days of his service from the date of his first appointment in the establishment of opponent No.2. The service of the applicant is to be considered as continuous from the

said date for all purpose i.e. for fixation of his pay scale, grades, etc. However, the said period from initial appointment date till the date of this reference will be considered as notional period, thereby the applicant will not be entitled for any arrears for said period but the said period will be considered as his continuous service for fixing his pay scale, grade, etc. as well as for giving all the benefits including retirement benefits which are given to permanent employees on said equivalent post. Thereby he is to be paid arrears of all the benefits as such by calculating the same for the period from the date of reference till date of his retirement minus the amount already paid as salary and is also to be paid all the retirement benefits for which he is entitled as a regular peon. The implementation of this award is to be done within thirty days from the date of publication of this award.

(3). As per final order.

(9). **Reasons for issues :**

(10). **Issue No.1::**

(1). The opponent No.1 herein is the District Development Officer and the opponent No.2 is the Taluka Development Officer of District: Gir-Somnath, hence it is to be discussed that whether the said establishments comes under

purview of definition of an industry and so the provisions of the I. D. Act are applicable to them. At this juncture, it is fruitful to refer *sec.2(j)*, the definition of “*industry*”, of the I. D. Act.

Sec.2(j) :

“industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

(2). The amended definition of “industry” has not yet come into existence. So to understand the scope of the existing definition it will be necessary to refer the citation, the case before *hon'ble Supreme Court* between *Bangalore Water Supply and Sewerage Board v/s A. Rajappa*², which was decided by the bench of seven Judges. The same citation is also referred again in case between *Karnani Properties Ltd. v/s State of W. B.*³ and in case of *MGT of Somvihar Apartment Owners Housing Management Society Ltd. v/s Workman c/o Indian Engineering & General Mazdoor*⁴. It is held that the scope of “industry” as defined in *sec.2(j)* has a wide import. It was held as under:

(a). *Where there is*

(1) Systematic activity

(2) Organized by co-operation between employer and employee (the direct and substantial element is chimerical)

2 Bangalore Water Supply and Sewerage Board v/s A. Rajappa reported in AIR 1978 SC 548.

3 Karnani Properties Ltd. v/s State of W.B. Reported in AIR 1990 SC 2047.

4 MGT of Somvihar Apartment Owners Housing Management Society Ltd. v/s Workman c/o Indian Engineering & General Mazdoor reported in AIR 2002 SC 2630.

(3) For the production and / or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but motive of material things or services geared to celestial bliss eg. Making on a large scale prasad or food) prima facie, there is an “industry” in the enterprise.

(b). Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c). True focus is functional and decisive test is the nature of activity with special emphasis on employer – employee relations.

(d). If the organization is a trade or business it does not cease to be one because philanthropy animating the undertaking.

(3). Here in this case looking to the opponents they are respectively, the D.D.O. and T.D.O. of District: Gir-Somnath. The applicant has pleaded in the statement of claim that he was working on post of peon in the establishment of the opponent No.2. The opponent No.1 has not remained present in this case, however the said opponent No.1 is the higher authority of the opponent No.2 and the applicant herein is / was working in said establishment as a peon. It is pertinent to note that the opponent No.1 has not remained present in this proceeding whereas the opponent No.2 has not raised any such contention or pleading that their establishment is not falling under the purview of an industry. However, it is very much clear that both the said establishments are Government bodies and they perform work related to public service and conducting elections as per the instructions and guidelines of the State Government. Further

different sorts of work are performed therein by the co-operation of the employees for providing facilities to the citizens living under their area. The factor of profit or loss or work related to purely of business nature is not important. So looking to the said works performed therein as well as the above definition and its scope as is narrated in the above enunciation of law, the opponents being the DDO & TDO undertakes systematic activity. Also looking to the citation, the case before *hon'ble Gujarat High Court* between *Saurashtra Mazoor Mahajan Sangh, Rajkot v/s D. M. Vin⁵*, wherein it is held that the Panchayat is an industrial enterprise discharging municipal functions and such panchayat or municipal service would be an industry within the meaning of sec.2(j). So it is sufficient enough to conclude that the establishment of the opponents comes under the purview of the definition of an “industry”, of the I. D. Act and hence answer to issue No.1 is given in “*affirmative*”.

(11). Issue no. 2::

(1). Now the present case is forwarded for the adjudication of an industrial dispute which is raised in form of the demand, by the union for the employee named Premdas K. Chavda, working in the establishment of the opponent No.2. Looking to the terms of reference, it is to be decided that whether the said employee, who is working in the opponent No.2 should be regularized on completion of 240 days from his joining date

⁵ Saurashtra Mazoor Mahajan Sangh v/s D. M. Vin reported in 1974 GLR 32.

by providing him benefits of pay scale, grade, etc. which are provided to the permanent employees and he should be paid arrears for the period from his date of joining till date. It is pertinent to note that in the original reference order the date of joining was mentioned as dt.01.08.2018 but as per subsequent amendment for the same it is to be considered as dt.01.08.1986, therefore, the present industrial dispute is now to be adjudicated by considering the said amended date as the date of joining. To adjudicate the above industrial dispute, this case is to be decided on basis of facts of present case and rationale of hon'ble Apex Court and High Courts.

(2). Before going to the facts of this case it is required to understand the terms, "permanent employee" and "regular employee". The Gujarati word for the term, "permanent" is કાયમી or સથાયી. The Gujarati word for the term, "regular" is નિયમીત or કાયદેસર and the Gujarati word for the term, "regularize" is બરાબર નિયમસર કરવું or પધ્ધતિસર કરવું.

The dictionary meaning of the term, "permanent employee" means an employee who has been hired for a position without a pre-determined time limit. A permanent employee differs from a term or temporary employee, both of which have a pre-determined period of employment.

The meaning of the term, "regular employee" means an employee who has been appointed to a position in the classified service in accordance with the service rules after completing the trial service period.

Further the said two terms are used interchangeably,

though regular is the more accurate of the terms. The term permanent is used to mean long term, though it is inaccurate as it implies a guarantee of employment that is not usually available.

(3). At this juncture, before going to the facts of the case, it is necessary to refer the landmark dictum of *hon'ble Supreme Court* the case between *Secretary, State of Karnataka v/s Umadevi and others*⁶. It is necessary to quote para No.44 of this judgment which is as below:

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 regularization 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 instrumentalists should take steps to regularize 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

⁶ Secretary, State of Karnataka v/s Umadevi reported in (2006) 4 SSC 1.

under cover of orders of courts or of tribunals and should further ensure that regular recruitment are undertaken to fill those vacant sanctioned posts that are 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.....

So as per the above direction, the Government instrumentalities were directed to take one time measure for regularizing the employees who are appointed irregularly and not illegally. This one time measure was to be set in motion within six months from the date of the above judgment i.e. dt.10.4.2006. Therein, the reference was also made to three other dictum which are discussed in para No.15 of the said judgment. It is also necessary to quote this para No.15 which is as below:

15. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In STATE OF MYSORE Vs. S.V. NARAYANAPPA [1967 (1) S.C.R. 128], this Court stated that it was a mis-conception to consider that regularization meant permanence. In R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. [(1972) 2 S.C.R. 799], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:- "Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on

behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

In B. N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this Court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been

dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

(4). So looking to the above para, it is clearly stated that the irregular appointment can be regularized but illegal appointment cannot be legalized or regularized. Further there is vast difference in granting permanency and granting regularization. Hence, if the appointment of the employee of the present case is irregular then the same can be regularized but not, if the same is illegal.

It is further required to note that after pronouncement of the judgment of ***Umadevi (supra)*** many of the instrumentalities of the Government did not carry out the exercise of one time measure as directed in the said judgment and in some cases the said six months period was passed. So the authorities interpreted that as the six months period mentioned in the said direction is over, so no further action is required to be taken. Hence the ***hon'ble Supreme Court*** has cleared this misconception in the judgment which is the case between ***State***

*of Karnataka & Ors. v/s M. L. Kesari & Ors.*⁷. The para Nos.5 to 8 of it, are relevant for this case which are quoted as below:

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.

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

⁷ State of Karnataka & Ors. v/s M. L. Kesari reported in 2010 III CLR 193.

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 one-time

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.

So as per the above dictum, even if the employer has not undertaken such an exercise of regularization within six months from the decision of Umadevi's case, it will not disentitle such employees whose right is to be considered for regularization in terms of the directions in Umadevi as a one time measure.

(5). At this moment, it is also fruitful to refer and quote some of the paras of the citation, which is the case before ***hon'ble Supreme Court*** between ***Umralla Gram Panchayat v/s The Secretary, Municipal Employees Union & Ors.***⁸. The para Nos.13 and 14 are as below:

13. Further, Section 25(T) of the ID Act clearly states that unfair labour practice should not be encouraged and the

⁸ Umralla Gram Panchayat v/s The Secretary, Municipal Employees Union decided on dt.27-3-2015 in Civil Appeal no.3209-3210 of 2015.

same should be discontinued. In the present case, the principle “equal work, equal pay” has been violated by the appellant -Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent-Union needs to be accepted. The High Court has thus, rightly not interfered with the Award of the Labour Court as the same is legal and supported with cogent and valid reasons.

14. Therefore, the learned single Judge as well as the Division Bench of the High Court have exercised the power under Articles 226 and 227 of the Constitution of India and have rightly held that the Labour Court has jurisdiction to decide the industrial dispute that has been referred to it by the Dy. Commissioner of Labour, Ahmedabad. Reliance has been placed upon the decision of this Court in the case of Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmchari Sanghatana, wherein it has been held thus:

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue

preventive as well as positive direction to an erring employer.”

Further, reliance has been placed upon the decision of this Court in the case of Durgapur Casual Workers Union v. Food Corporation of India, wherein it has been held thus:

“19. Almost similar issue relating to unfair trade practice by employer and the effect of decision of Umadevi in the grant of relief was considered by this Court in Ajaypal Singh v. Haryana Warehousing Corporation in Civil Appeal No. 6327 of 2014 decided on 9th July, 2014. In the said case, this Court observed and held as follows:

20. The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.

21. We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees....”

(6). So as per the above dictum, if the employer engages employees as casual or temporary employees for a long period

without giving them the status or privileges of permanent employees then it amounts to an unfair labour practice which is prohibited under the I. D. Act and in such cases the Labour Court or the Industrial Tribunal as the case may be, is authorized to pass preventive and positive directions against the employer.

(7). At this juncture, it is also required to refer some latest dictums of hon'ble Apex Court on the aspect of regularization of service of temporary / ad-hoc / daily-wager employees. The first citation is the case before ***hon'ble Apex Court*** between ***Jaggo v/s Union of India***⁹, wherein the appellants were part time and ad-hoc Safaiwalis and Khallasi in the Central Water Commission. They have preferred case before CAT for regularization of their service, which was rejected by observing that the appellants were not engaged on regular vacancies, they have not completed sufficient full time service by meeting the criterion of 240 days per year and their case does not attract the principles of enabling regularization. The writ petition preferred before hon'ble High Court was rejected by observing that the appellants does not possess the minimum educational qualifications and the employer had subsequently outsourced the relevant housekeeping and maintenance activities. In this judgment the hon'ble Apex Court has negated all the contentions and granted the relief regularization and reinstatement of service. It is required to refer some paras of said judgment which are as under:

10. Having given careful consideration to the submissions

⁹ Jaggo v/s Union of India, 2024 INSC 1034.

advanced and the material on record, we find that *the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labeling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.*

11. The appellants, throughout their tenure, were engaged in performing **essential duties that were indispensable to the day-to-day functioning of the offices** of the Central Water Commission (CWC). Applicant Nos.1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas—a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as “part-time workers,” the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement

was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

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

14. The abrupt termination of the appellants' services, following dismissal of their Original Application before the Tribunal, was arbitrary and devoid of any justification. The termination letters, issued without prior notice or explanation, violated fundamental principles of natural justice. It is a settled principle of law that even contractual employees are entitled to a fair hearing before any adverse action is taken against them, particularly when their

service records are unblemished. In this case, the appellants were given no opportunity to be heard, nor were they provided any reasons for their dismissal, which followed nearly two decades of dedicated service.

15. Furthermore, the respondents' conduct in issuing tenders for outsourcing the same tasks during the pendency of judicial proceedings, despite a stay order from the Tribunal directing maintenance of status quo, reveals lack of bona fide intentions. Such actions not only contravened judicial directives but also underscored the respondents' unwillingness to acknowledge the appellants' rightful claims to regularization.

16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

17. As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed—cleaning, sweeping, dusting, and gardening—does not inherently mandate formal educational prerequisites. It would be

unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades. Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

18.....

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned

functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in **Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.**, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes

their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

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

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

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job

security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgment of the United State in the case of *Vizcaino v. Microsoft Corporation* serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of

Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

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

- **Misuse of "Temporary" Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing*

identical tasks.

- ***Arbitrary Termination:*** *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*
- ***Lack of Career Progression:*** *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*
- ***Using Outsourcing as a Shield:*** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*
- ***Denial of Basic Rights and Benefits:*** *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.*

26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended

periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.

28. In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:

- i. The termination orders dated 27.10.2018 are quashed;
- ii. The appellants shall be taken back on duty forthwith and **their services regularized forthwith**. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but **would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits**.

(8). The next in line is also the judgment before ***hon'ble Apex Court*** between ***Shripal v/s Nagar Nigam, Gaziabad***¹⁰,

¹⁰ Shripal v/s Nagar Nigam, Gaziabad, 2025 INSC 144.

wherein also by relying on former judgment of *Jaggo (supra)*, the appellant workmen were granted relief of regularization of services by directing the employer to carry out procedure for the same expeditiously. It is required to refer some paras of this judgment which are as under:

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

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer’s failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour

jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfill ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement....

So, the above judgment also clearly says that perennial work cannot be taken from temporary or ad-hoc or daily wager employees for long period running in to more than decades.

(9). Further looking to the recent judgment of *hon'ble Apex Court* in case between *Dharam Singh & Ors. v/s State of U. P. & Anr.*¹¹, wherein also the ad-hoc employees performing perennial work for long period were directed to be absorbed in regular service by giving directions. Therein also the earlier judgments of *Jaggo (supra)* and *Shripal (supra)* were referred and relied. It is required to refer some paras of the above judgment which are as under:

1. When public institutions depend, day after day, on the same hands to perform permanent tasks, equity demands that those tasks are placed on sanctioned posts, and those workers are treated with fairness and dignity. The controversy before us is not about rewarding irregular employment. It is about whether years of ad hoc engagement, defended by shifting excuses and pleas of

¹¹ 2025 INSC 998, Civil Appeal No.8558 of 2018 decided on dt.19.08.2025.

financial strain, can be used to deny the rights of those who have kept public institutions running. We resolve it by insisting that public employment should be organized with fairness, reasoned decision making, and respect for the dignity of work.

6. *The question before us is whether the High Court erred in failing to adjudicate the appellants' principal challenge to the State's refusals to sanction posts and treating the matter as a mere plea for regularization, and, if so, given the appellants' long and undisputed service, what appropriate relief ought to follow from this Court.*

7. *Having heard the learned counsel for the parties and perused the record, we are unable to endorse the approach adopted by the High Court. The original writ petition before the High Court expressly assailed the State's refusal dated 11.11.1999 to sanction posts for the Commission and sought a mandamus for creation of posts with consequential consideration for the appellants. The Single Judge of the High Court, and the Division Bench of the High Court in appeal, treated **the matter as a bare plea for regularization, answered it only on the touchstone of absence of rules and vacancy, and rested principally on Umadevi (Supra).** In doing so, the Courts below failed to adjudicate the principal challenge to the State's refusal and the legality of its reasons. In our opinion, such non-consideration amounts to a misdirection and, in effect, a failure to exercise jurisdiction.*

8. *The State's refusal of 11.11.1999 cites "financial constraints" and the subsequent decision of 25.11.2003 (taken after the High Court's direction to reconsider) adverts to financial crisis and a ban on creation of posts. Neither decision engages with relevant considerations placed on record, namely, the Commission's 1991 resolution and repeated proposals, the acknowledged administrative exigencies of a recruiting body handling large cycles, **the continuous deployment of these very hands for years, and the existence of attendant work that is primarily perennial rather than sporadic.** While creation of posts is primarily an executive function, the refusal to sanction posts cannot be immune from judicial scrutiny for arbitrariness. **We believe that a non-speaking rejection on a generic plea of "financial constraints", ignoring functional necessity and the employer's own long-standing reliance on daily wagers to discharge regular duties, does not meet the standard of reasonableness expected of a model public institution.***

9. *Moreover, it is undisputed that the nature of work performed by the appellants, i.e. sorting and scrutiny of applications, dispatch and office support, and driving, **has been continuous and integral to the Commission's functioning** since their engagement between 1989 and 1992. The Commission itself moved for sanction of fourteen posts and furnished a list of fourteen daily wagers including the appellants. That consistent internal demand, coupled with **uninterrupted utilisation of the appellants'***

labour on regular office hours, fortifies the conclusion that the duties are perennial. To continue extracting such work for decades while pleading want of sanctioned strength is a position that cannot be sustained.

10. It must be noted that the premise of “no vacancy” is, in any event, contradicted by the evidence on record. An RTI response of 22.01.2010 received from the office of Respondent No.2 indicated existence of Class-IV vacancies. Furthermore, I.A. No. 109487 of 2020 filed before this Court by the appellants specifically pointed to at least five vacant Class-IV/Guard posts and one vacant Driver post within the establishment. That application also set out the names of similarly situated daily wagers who were regularized earlier within the same Commission. No rebuttal was filed to the I.A. The un rebutted assertion of vacancies and the comparison with those who received regularization materially undermine the High Court’s conclusion that no vacancy existed and reveal unequal treatment vis-à-vis persons similarly placed. Selective regularization in the same establishment, while continuing the appellants on daily wages despite comparable tenure and duties with those regularized, is a clear violation of equity.

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 acknowledgment 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 & Another 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.....*

12. We also note the Commission's affidavit filed in 21.04.2025 pursuant to the order of this Court dated 27.03.2025, wherein reference has been made to a supervening reorganization in 2024, whereby the U.P. Higher Education Services Commission was merged into the U.P. Education Services Selection Commission and, by a Government Order of 05.07.2024, certain Group-C posts were sanctioned while Class-IV/Driver requirements were proposed to be met through outsourcing. We must point out however, that supervening structural change cannot extinguish accrued claims or pending proceedings. The

successor body steps into the shoes of its predecessor subject to liabilities and obligations arising from the prior regime. More fundamentally, a later policy to outsource Class- IV/Driver functions cannot retrospectively validate earlier arbitrary refusals, nor can it be invoked to deny consideration to workers on whose continuous services the establishment relied for decades.

*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.*

14. The learned Single Judge of the High Court also declined relief on the footing that the petitioners had not specifically assailed the subsequent decision dated 25.11.2003. However, that view overlooks that the writ petition squarely challenged the 11.11.1999 refusal as the High Court itself directed a fresh decision during pendency, and the later rejection was placed on record by the respondents. In such circumstances, we believe that

*the High Court was obliged to examine the legality of the State's stance in refusing sanction, whether in 1999 or upon reconsideration in 2003, rather than dispose of the matter on a mere technicality. The Division Bench of the High Court compounded the error by affirming the dismissal without engaging with the principal challenge or the intervening material. The approach of both the Courts, in reducing the dispute to a mechanical enquiry about "rules" and "vacancy" while ignoring the core question of arbitrariness in the State's refusal to sanction posts **despite perennial need and long service, cannot be sustained.***

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

16. The appeal must, accordingly, be allowed.

17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary

labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organize work on lawful lines.

18. Moreover, it must necessarily be noted that “ad-hocism” thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If “constraint” is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

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

i. Regularization and creation of Supernumerary posts:

All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh

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

ii. Financial consequences and arrears:

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

iii. Retired appellants:

Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of

superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgment.

iv. Deceased appellants:

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

v. Compliance affidavit:

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

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling “reconsiderations,” and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organize its perennial workers on a

sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India.

(10). Further looking to the recent judgment of *hon'ble Apex Court* which is the case between *Bhola Nath v/s State of Jarkhand & Ors.*¹², wherein it is required to refer some paras which are as under:

Limits on Perpetual Contractual Engagements:

13.2. In the present case, the respondent-State had engaged the services of the appellants on sanctioned posts since the year 2012. It was only towards the end of the year 2022 that the respondents communicated that no further extension of the appellants' engagement was likely to be granted.

13.3. In our considered opinion, the aforesaid action is not only vitiated by arbitrariness but is also in clear derogation

¹² S.L.P. (Civil) No.30762 of 2024 & others decided on dt.30.01.2026.

of the equality principles enshrined in Article 14 of the Constitution. The respondent-State initially engaged the appellants in their youth to discharge public duties and functions. Having rendered long and dedicated service, the appellants cannot now be left to fend for themselves, particularly when the employment opportunities that may have been available to them a decade ago are no longer accessible owing to age constraints.

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

13.5. Such a decision must necessarily be a conscious and reasoned one. An employee who has satisfactorily discharged his duties over several years and has been granted repeated extensions cannot, overnight, be treated as surplus or undesirable. We are unable to accept the justification advanced by the respondents as the obligation of the State, as a model employer, extends to fair treatment of its employees irrespective of whether

their engagement is contractual or regular.

13.6. *This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of “part-time”, “contractual” or “temporary” in perpetuity and thereby exploiting them by not regularizing their positions. In Jaggo v. Union of India, this Court underscored that government departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization.*

13.7. *In Shripal v. Nagar Nigam, and Vinod Kumar v. Union of India, this Court cautioned against a mechanical and blind reliance on Umadevi (supra) to deny regularization to temporary employees in the absence of statutory rules. It was held that Umadevi (supra) cannot be employed as a shield to legitimise exploitative engagements continued for years without undertaking regular recruitment. The Court further clarified that Umadevi itself draws a distinction between appointments that are “illegal” and those that are merely “irregular”, the latter being amenable to regularization upon fulfillment of the prescribed conditions.*

13.8. *In Dharam Singh v. State of U.P., this Court strongly deprecated the culture of “ad-hocism” adopted by States in their capacity as employers. The Court criticised the practice of outsourcing or informalizing recruitment as*

a means to evade regular employment obligations, observing that such measures perpetuate precarious working conditions while circumventing fair and lawful engagement practices.

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

13.10. *In the aforesaid backdrop, we are unable to persuade ourselves to accept the respondent-State's contention that the mere contractual nomenclature of the appellants' engagement denudes them of constitutional protection. The State, having availed of the appellants' services on sanctioned posts for over a decade pursuant to a due process of selection and having consistently acknowledged their satisfactory performance, cannot, in the absence of cogent reasons or a speaking decision, abruptly discontinue such engagement by taking refuge behind formal contractual clauses. Such action is manifestly arbitrary, inconsistent with the obligation of the State to act as a model employer, and fails to withstand*

scrutiny under Article 14 of the Constitution.

FINAL CONCLUSION:

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

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

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

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

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

V. In view of the foregoing discussion, we direct the respondent-State to forthwith regularize the services of all the appellants against the sanctioned posts to which they were initially appointed. The appellants shall be entitled to

all consequential service benefits accruing from the date of this judgment.

(11). So right from the judgment of Umadevi till the above last judgment of Bhola Nath, the hon'ble Apex Court in clear terms has held that perennial work cannot be taken from temporary or ad-hoc or daily wager employees for long period running in to more than decades. Further such practice is deprecated and it has directed that the State should act as a model employer. It is even held that the constitutional right of the employees cannot be defeated by any stipulation of contract by terming it as waiver from the side of employee. Hence, basic ingredients for entitlement of relief regarding regularization of service is that the initial appointment should be an irregular appointment which is done for perennial work and same is continued for long periods.

(12). Now looking to the facts of this case, herein the applicant has stated that he was working as a peon with the opponent No.2 since dt.01.08.1986 and he was illegally terminated from service on dt.04.04.1994 so he has preferred industrial dispute *vide* Ref. (LCJ) No.6/1996, wherein award was passed to reinstate him with back-wages and all benefits of service. The applicant side has produced the xerox certified copy of said award at Exh.34, wherein the step of terminating him from service was held to be illegal and the opponent was directed to reinstate the applicant on his original post by considering his service as continuous from dt.08.01.1986 with back-wages and

ancillary benefits of service. The said award was passed on dt.13.09.1999. Further in this award there was a specific finding given that the applicant has joined service on dt.01.08.1986 and his service was continuous as provided in sec,25-B of the I. D. Act.

(12.1). It is pertinent to note that the opponent has challenged the said award by preferring S.C.A. No.2175 of 2000, wherein oral judgment was passed on dt.29.07.2010 by partly allowing the petition. The award qua back-wages was quashed and set aside and rest of the award was confirmed which means the applicant was to be reinstated with continuity of service. The copy of said oral judgment is produced at Exh.35.

(12.2). The applicant has stated that on basis of the said award passed in reference case he was reinstated in his service. In pursuance to the same, if the office order dtd.14.05.2000 of the opponent No.2 which is produced at Exh.28, is perused then therein it is stated that the applicant is to be reinstated and accordingly it was directed to take the applicant as peon from dt.12.01.2000 in pay scale of Rs.750-940 with basic pay of Rs.750/- along with entitled benefits. The applicant *vide* Exh.36 has produced his presence report dtd.10.04.2000. Therefore, it is proved that the applicant was reinstated as peon with continuity of service.

(12.3). The applicant in para No.3 of his statement of claim has stated that he is performing work of a peon and said work is

of permanent nature. This fact is specifically admitted by the opponent side in para No.3 of their written statement. This means that the aspect of perennial nature of work being performed by the applicant as a peon under the opponent No.2 is not in dispute.

(12.4). The applicant has further contended that he has performed continuous and uninterrupted service by performing service of more than 240 days in every year. In pursuance to the same the applicant *vide* Exh.11 has preferred application seeking documents from the opponent, wherein he has prayed for production of muster rolls from his date of joining till date, salary statement / registers, set-up of the establishment for last 20 years and details of juniors who have been regularized. This application was partly allowed and except the details of juniors who have been regularized, all the other documents were directed to be produced by the opponent side and if the same are not in their custody then the responsible officer was to submit an affidavit failing which adverse inference will be drawn as provided in the Indian Evidence Act. In pursuance to the same the opponent has produced contingency bills showing salary paid to the applicant for the period from April 2016 to February 2017 and from March 2018 to December 2021, respectively at Exh.29 to 33. This itself shows that from 2016 to 2021 the applicant has performed continuous work. However the opponent side has not produced other documents nor has submitted any affidavit of their responsible officer in compliance with the said order passed below Exh.11, therefore adverse inference is to be drawn against the opponent as is stated in the said order.

The applicant side has relied on the citation which is the case before *hon'ble Gujarat High Court* between *Balubha Ashabhai Manek v/s Gujarat Water Supply and Sewerage*¹³, wherein it is held that when any award of reinstatement is passed then implicitly the benefit of continuity of service has to be read in such awards. Herein the award passed by the Labour Court itself is very much clear and the continuity of service is granted along with reinstatement which is upheld by hon'ble High Court.

(12.5). Now if we peruse the oral evidence then the applicant has examined himself at Exh.19, wherein he has reiterated the facts mentioned in statement of claim. In his cross examination he has admitted that he was not appointed as per recruitment process. But has denied that he was not working on post of set-up, his work was not of perennial nature, he has not performed work of more than 240 days in any year and complaints were now and then given against his work. He has further denied that work has not increased successively with the opponent, post in the set-up has not increased, he has not made submission before the opponent for making him regular and has preferred present false case for regularization.

(12.6). Now if we discuss regarding the defense of the opponent that the work of the applicant was not satisfactorily and complaints were now and then received for the same, then not a single document is produced for the same, nor is any memo or

¹³ SCA No.20894 of 2017 along with 21570 of 2017 decided on dt.06.03.2020.

notice issued to the applicant or any reprimand letter issued to the applicant, is produced in this case. Therefore, the said contention is merely an oral statement without any corroborative documentary evidence being produced for the same hence same cannot be accepted.

(12.7). Now if we peruse the oral evidence of the opponent witness examined at Exh.27, then he is the T.D.O, who has reiterated the facts of their written statement in his affidavit of chief examination, whereas in his cross examination he has admitted that the applicant is performing service as a peon since dt.01.08.1986. He has even admitted about the facts of termination of his service on dt.04.04.1994 and reference case being preferred for reinstatement wherein order of reinstatement was passed so he was taken back on work. They have preferred petition before hon'ble High Court against the said award of reinstatement, wherein the order of back-wages was set aside but rest of the award was confirmed. He has admitted that their establishment maintains salary statements and attendance registers of employees and he has not produced salary statement of the applicant but has clarified that his salary was paid in contingency so said bills are produced. He has stated that it has not so happened that the applicant was reprimanded in writing nor has it happened so, that any inquiry was held against the applicant. He has admitted that area of Una taluka has increased lot in comparison to the year 1986 and the work of panchayat has also increased. He has stated that he is ready to produced the statement related to set-up of peon of their establishment.

In pursuance to the same the opponent at Exh.38 has produced the said statement of set-up of the peon, wherein the post of peon is shown under class 4, therein 5 post are shown as sanctioned in the set-up and only one has been filled and two posts are shown as vacant for long period, one from dt.31.08.2019 and one from dt.31.07.2020. This means there were vacant sanctioned post of peon available with the opponent, which means the applicant was working on vacant sanctioned post of peon.

(12.8). As far as the aspect of qualification required for the post of peon is concerned then the opponent has neither pleaded nor proved that any such basic qualification is required for the post of peon. Further when the applicant has worked as peon since the year 1986 then also the opponent now cannot raise any such contention of not possessing basic requisite qualification.

(13). Further as per the series of dictum referred herein above, if the employer engages employees as casual or temporary employees for a long period without giving them the status or privileges of permanent employees then it amounts to an unfair labour practice which is prohibited under the I. D. Act and in such cases the Labour Court or the Industrial Tribunal as the case may be, is authorized to pass preventive and positive directions against the employer.

Therefore, herein the appointment of applicant is not proved to be illegal or by way of back door entry but at the most it can be said to be an irregular appointment. Further when the

applicant is continued for perennial work for long period and when sanctioned vacant post for said work is also available, hence the applicant has become entitled for the relief of regularization of service under the opponent No.2.

Now one more thing is to be discussed that herein the present case is of the year 2019 but neither of the parties has pleaded or contended that what is present situation of the applicant i.e. whether he is still in service or he has retired due to reaching the age of superannuation. In pursuance to the same if the conciliation proceedings is perused then therein along with the record of amendment order the adhar card of the applicant is produced, wherein his birth date mentioned is dt.09.10.1963 which means that as per said birth date the applicant might have completed 60 years in the month of October 2023 and so he might have been retired from service. So while deciding the about the appropriate relief which is to be granted for regularization of service the said aspect of retirement is required to be considered for negating the aspect of future further litigation and any misinterpretation which might arose if same is not taken care of.

(14). So looking to the forgoing reasons and discussions, the issue No.2 is also replied in ***“affirmative”***. As far as the aspect of relief is concerned then the applicant is entitled for the relief of regularization of his service. His service is to be regularized on the equivalent post of peon on which he is/was working. His service is to be regularized after completion of 240 days of his service from the date of his first appointment in the establishment

of opponent No.2. The service of the applicant is to be considered as continuous from the said date for all purpose i.e. for fixation of his pay scale, grades, etc. However, the said period from initial appointment date till the date of this reference will be considered as notional period, thereby the applicant will not be entitled for any arrears for said period but the said period will be considered as his continuous service for fixing his pay scale, grade, etc. as well as for giving all the benefits including retirement benefits which are given to permanent employees on said equivalent post. Thereby he is to be paid arrears of all the benefits as such by calculating the same for the period from the date of reference till date of his retirement minus the amount already paid as salary and is also to be paid all the retirement benefits for which he is entitled as a regular peon. The implementation of this award is to be done within thirty days from the date of publication of this award. Therefore, the final order for issue no.3 is passed as below in the interest of justice.

:: ORDER ::

(1). The demand raised by the applicant in this reference case is hereby partly allowed.

(2). The applicant is entitled for the relief of regularization of his service. His service is to be regularized on the equivalent post of peon on which he is/was working. His service is to be regularized after completion of 240 days of his service from the date of his first appointment in the establishment

of opponent No.2. The service of the applicant is to be considered as continuous from the said date for all purpose i.e. for fixation of his pay scale, grades, etc. However, the said period from initial appointment date till the date of this reference will be considered as notional period, thereby the applicant will not be entitled for any arrears for said period but the said period will be considered as his continuous service for fixing his pay scale, grade, etc. as well as for giving all the benefits including retirement benefits which are given to permanent employees on said equivalent post. Thereby he is to be paid arrears of all the benefits as such by calculating the same for the period from the date of reference till date of his retirement minus the amount already paid as salary and is also to be paid all the retirement benefits for which he is entitled as a regular peon. The implementation of this award is to be done within thirty days from the date of publication of this award.

(3). The parties will have to bear their own respective cost of this proceedings.

Date : 11.06.2026 (Parvezahemad Alimohamad Malaviya)

Place: Rajkot Member,

Camp at: Junagadh. Industrial Tribunal, Rajkot.

Code No. GJ00837.
