

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 1086 of 2020

.....
1. Dablu Hazra, aged about 30 years, Sri Sarju Hazra, resident of Village -Panduki, Tola Purnadih, PO-Nagnagar, PS-Barwadda, District - Dhanbad (Jharkhand)

2. Rekha Devi, aged about 27 years, W/o Dablu Hazra, resident of Village -Panduki, Tola Purnadih, PO-Nagnagar, PS-Barwadda, District - Dhanbad (Jharkhand).
..... Petitioner (s)

Versus

1. Indian School of Mines, Dhanbad, through its Registrar, having its office at P.O. + P.S. & District - Dhanbad, PIN 826004 (Jharkhand)

2. Registrar, Indian School of Mines, Dhanbad, P.O. + P.S. & District - Dhanbad PIN 826004 (Jharkhand)

3. Assistant Registrar (Accounts), Indian School of Mines, Dhanbad, P.O. + P.S. & District - Dhanbad PIN 826004 (Jharkhand).
..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

.....
For the Petitioner(s) : Mr. A.K.Das, Sr. Advocate

Ms. Swati Shalini, Advocate

For the Respondents : Mr. Prashant Pallav, Advocate

C.A.V. ON: 22/06/2026

PRONOUNCED ON:10/07/2026

1. Heard learned counsel for the parties.

2. The petitioners in this writ petition are husband and wife and they have prayed for a direction upon the respondents to regularize the service of the petitioner no.1 who was initially appointed on daily wage basis far back in the year 2013 on account of death of his mother-in-law i.e. mother of the petitioner no.2 and has been working continuously since then and alternatively the petitioners have prayed that the respondents be directed to consider the

case of the petitioner no.2 for appointment on compassionate grounds in place of her deceased mother.

Brief Facts

3. The petitioner nos.1 and 2 are the husband and wife. Petitioner no.1 was married to the petitioner no.2 and were residing in the house of the petitioner no.2 along with her mother Nimala Devi. Nirmala Devi was a permanent employee of Indian School of Mines, Dhanbad (Now I.I.T. Dhanbad) where she was working as a peon and she died while in service on 26.02.2010 (Annexure 1).

4. After her death, a request was made on 26th of March 2010 (Annexure 2) to the respondents to provide employment to the petitioner no.1 on compassionate grounds as at the relevant time, the petitioner no.2 had a child aged five months. When no action was taken, the petitioners made repeated representations including the representation dated 18th of August 2011 (Annexure 3) and representation dated 06.07.2012 (Annexure 4). The respondents thereafter called the petitioner no.1 in the year 2013 and employed him on daily wage basis; since then he is continuously working till date and the respondents have been issuing experience certificates from time to time (Annexure 5).

5. Under the scheme of compassionate appointment, employment is required to be provided to one of the

dependents of a deceased-employee in Class III or Class IV post. However, the respondents-authorities have deprived the said benefit of compassionate appointment and instead, provided employment to the petitioner no.1 on daily wage.

6. The petitioner no.1 made repeated representations for providing him a regular employment or alternatively provide employment on compassionate grounds to the petitioner no.2 (Annexure 6) and ultimately, the petitioners sought information under the Right to Information Act, which was provided by the respondents on 6th of September 2019 wherein they have informed that five seats in Grade IV are reserved for employment on compassionate grounds and as per the existing scheme, there is no discrimination being made about married and unmarried daughters (Annexure 7).

Having no alternative, the petitioners moved this Court by way of the instant writ petition.

Case of the Respondents

7. The respondents appeared and filed a counter affidavit on 20th of March 2023 wherein they have admitted the fact that Nimala Devi was a permanent employee who was working as Peon at ISM, Dhanbad and further also admitted the existence of a scheme of compassionate appointment which is applicable to the employees of IIT/ISM, Dhanbad as contained in Office Memorandum No.F.No.14014/02/2012-

Estt(D) dated 16.01.2013 (Annexure A). However, the respondents initially raised an objection that a married daughter cannot be provided employment on compassionate grounds by relying on the judgment of the Hon'ble Supreme Court in the case of ***State of Maharashtra and Another v. Ms. Madhuri Maruti Vidhate*** reported in ***2022 SCC Online SC 1327***, despite the fact that in reply to information sought under the Right to Information Act also the respondents have confirmed that under the scheme there is no discrimination between married and unmarried daughter with respect to claim of compassionate appointment.

8. The respondents further in para 17 of the same counter affidavit have acknowledged the fact that there is no discrimination being made between married and unmarried daughter provided that the married daughters are fully dependent on the earning of the deceased-employee. This apart, the respondents have admitted that the petitioner no.1 was engaged on daily wage basis as a semi-skilled/skilled/unskilled labourer and further have taken a stand that all Group-D posts existing before 2006 have been recommended for abolition and the respondents-Institute has accepted the work study unit report and recruitment in respondents-Institute against Group C and Group D have been stopped and in support thereof, have brought on record

a letter dated 16.06.2011 (Annexure B) and further pleaded in paragraph 20 of the counter affidavit that the respondents-Institute did not have any sanctioned post wherein the petitioner no.1 can be employed.

9. The respondents in paragraph 21 have pleaded that as per the existing rules, 5% posts of the regular vacancy have to be filled up by way of compassionate appointment, but in absence of any vacancy in Group C and Group D posts, no post could be earmarked for compensation. Even if the petitioner no.1 or petitioner no.2 is found eligible, he/she cannot be considered for employment on compassionate grounds.

But the respondents in paragraph 18 of the counter affidavit have also admitted the fact that in order to tide over the crisis, the petitioner no.1 was engaged on daily wage basis.

Supplementary Affidavit dated 23.09.2023

10. In order to establish the falsity of the statements made by the respondents in their counter affidavit to the extent that all Group C and Group D posts have been abolished and in absence of any post no employment on compassionate grounds has been given; the petitioners filed a supplementary affidavit on 23.09.2023 wherein at paragraph 6 the petitioners had given the details of the persons who

have been provided employment sometimes in October 2020
which are as under:-

Name of the Appointee	Name of the Dependent against whom appointment was made	Date of Appointment	Date of death of the employee
Deepak Gope	Kameshwar Gope	Oct. 2020	Could not be ascertained
Ravi Kant Pyarelal	Parshuram Mistry	Oct. 2020	Could not be ascertained
Kundan Kumar Sharma	Vinod Sharma	Oct. 2020	Could not be ascertained
Sumona Jhampaty	Sureshwar Jhampaty	Oct. 2020	Could not be ascertained
Monika Hansda	Tikoram Hasda	Oct. 2020	Could not be ascertained

Supplementary Counter Affidavit by the Respondents

dated 16.12.2023

11. When such supplementary affidavit was filed by the petitioners and the stand taken by the respondents on the face of it got falsified, the respondents filed a supplementary counter affidavit on 16th December 2023 wherein the respondents tried to justify those employment on compassionate grounds by stating that the respondents-Institute published an advertisement bearing Notification No. 411002/1/2019-Estt dated 23rd August 2019 (Annexure C) and in the said advertisement, 5% of the vacancies in the posts of Junior Assistant Junior and Technicians were

earmarked to be filled up from eligible dependents of employees who died while in service in the respondents-Institute on compassionate grounds. The respondents further stated that 11 applications were received for employment on compassionate grounds, out of which 05 candidates were provided employment and the petitioners did not submit any application and, therefore, they were not considered. The respondents further admitted that in response to the information sought under Right to Information Act the respondents provided information mentioning the details of 07 persons who have been provided employment on compassionate grounds between 2010 to 2023 (Annexure D).

12. The respondents there after also took a plea that petitioner no.1 is working under a contractor and is receiving salary from the contractor Sun Facilities (Pvt.) Limited.

Rejoinder on behalf of the petitioners

13. The petitioners filed a rejoinder to the said supplementary counter affidavit specifically mentioning that the respondents have been trying to mislead this Court by making one wrong plea or the other. The advertisement which was issued by the respondents had no concern with the scheme of compassionate grounds and it was for regular employment.

14. This apart, the petitioners highlighted that the respondents from time to time are changing their stand. In the initial counter affidavit, the respondents took a stand that due to abolition of Class C and Class D posts, no appointment on compassionate grounds has been made, but once the petitioners brought on record by way of a supplementary affidavit the names of employees who have been provided employment on compassionate grounds, the respondents now have tried to change the stand.

15. The petitioners had further stated that the petitioners had already applied for employment on compassionate grounds which was kept pending and in the meantime, the petitioner no.1 was provided employment on daily wages. The petitioners further stated in paragraph 12 of the said rejoinder that it was wrong to say that all employments were made pursuant to an advertisement; rather on the contrary, 02 candidates namely Kundan Kumar and Ravikant Pyarelal had moved this Court seeking employment on compassionate grounds in *W.P. (S) No. 2289 of 2018* and in *W.P.(S) No. 1384 of 2018*, respectively and in the light of the order passed by this Court directing the respondents to consider the case for compassionate appointment, both these employees have been provided employment on compassionate grounds.

Photocopy of the orders dated 02.07.2019 and 14.08.2019 passed in W.P. (S) No. 2289 of 2018 and W.P. (S) No. 1384 of 2018 had been brought on record by way of Annexure 9 in the said rejoinder.

16. The petitioners have also stated that petitioner no.1 never approached the contractor for appointment; rather it is the respondents-Institute who engaged the petitioner as a Daily Rated Mazdoor but subsequently created a false veil of a contractor only to frustrate the claim of the petitioners.

17. From the aforementioned facts, it is apparent that the petitioner no.1 is continuously working as a daily-wage worker since 2013 i.e. for more than last 13 years. The Hon'ble Supreme Court recently in the case of ***Dharam Singh and Others v. State of U.P. and Another***, 2025 SCC Online SC 1735, has held as under:-

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

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

sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

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

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

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

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

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

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

18. In yet another judgment, the Hon’ble Apex Court in the case of **Shripal and Another v. Nagar Nigam, Ghaziabad**, 2025 SCC Online SC 221, have observed as under:-

“10. The Respondent Employer consistently labelled the Appellant Workmen as casual employees (or workers engaged through an unnamed contractor), yet there is no material proof of adherence to Section 6N of the U.P. Industrial Disputes Act, 1947, which mandates a

proper notice or wages in lieu thereof as well as retrenchment compensation. In this context, whether an individual is classified as regular or temporary is irrelevant as retrenchment obligations under the Act must be met in all cases attracting Section 6N. Any termination thus effected without statutory safeguards cannot be undertaken lightly.

11. Furthermore, the Employer's stance that there was never a direct employer-employee relationship is wholly unsubstantiated. If, in fact, the Appellant Workmen had been engaged solely through a contractor, the Employer would have necessarily maintained some form of contract documentation, license copies, or invoices substantiating the contractor's role in hiring, paying, and supervising these workers. However, no such documents have been placed on record. Additionally, the Employer has failed to establish that wages were ever paid by any entity other than its own Horticulture Department, which strongly indicates direct control and supervision over the Workmen's day-to-day tasks is a hallmark of an employer-employee relationship. Had there been a legitimate third-party contractor, one would expect to see details such as tender notices, contract agreements, attendance records maintained by the contractor, or testimony from the contractor's representatives. The absence of these crucial elements undermines the Employer's claim of outsourced engagement. In fact, it appears that the Workmen were reporting directly to the Horticulture Department officials, receiving instructions on their duties, and drawing wages issued under the Municipality's authority. This pattern of direct oversight and wage disbursement substantially negates the narrative that they were "contractor's personnel." Consequently, the discontinuation of their services carried out without compliance with statutory obligations pertaining to notice, retrenchment compensation, or approval under Section 6E of the U.P. Industrial Disputes Act, stands on precarious ground. The very foundation of the Employer's defense (i.e., lack of an employer-employee relationship) is not supported by any credible or contemporaneous evidence.

14. The Respondent Employer places reliance on Umadevi (supra)² to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgment of this court in *Jaggo v. Union of India*³ in the following paragraphs:

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

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

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

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.”

19. In view of the facts stated hereinabove and also considering the fact that the petitioner no.1 is in continuous employment on daily wage under the respondents since 2013 and further the respondents have admitted that initial employment of the petitioner was provided only to enable his family to tide over the immediate hardship which the family

has been subjected to due to sudden death of their breadwinner, it would be appropriate and in the interest of justice that the respondents be directed to regularize the services of the petitioner no.1 or alternatively the respondents be directed to consider the case of petitioner no.2 for employment on compassionate grounds more so when the respondents themselves have admitted that under their scheme for compassionate appointment there is no discrimination between married and unmarried daughter.

20. Ordered accordingly.

21. The concerned Respondent is hereby directed to issue formal order as indicated hereinabove within a period of 10 weeks from the date of receipt of copy of this order.

22. Accordingly, the writ application is allowed. Pending I.A.(s), if any, stands closed.

(Deepak Roshan, J.)

Dated:10/07/2026
Amardeep/
A.F.R

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10.07.2026