



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4629 of 2023

In the matter of an application under Articles 226 and 227
of the Constitution of India.

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Bankabihari Mohanty

....

Petitioner

-versus-

State of Odisha and Others

....

Opposite Parties

For Petitioner : Mr. M.K. Khuntia, Advocate

For Opp. Parties : Mr. P.K. Sahoo, ASC

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:04.05.2026 and Date of Judgment:04.05.2026

Biraja Prasanna Satapathy, J.

1. Heard Mr. M.K. Khuntia, learned counsel for the petitioner and Mr. P.K. Sahoo, learned Addl. Standing Counsel for the State.

2. The present Writ Petition has been filed *inter alia* challenging order dated 23.12.2022 so passed by O.P.



No.1 under Annexure-7. Vide the said order, claim of the petitioner to get the benefit of regularization pursuant to the earlier order passed by this Court in W.P.(C) No.21658 of 2022 was rejected.

3. Learned counsel for the petitioner contended that petitioner was engaged on consolidated salary basis as a part time Sweeper-cum-Night Watchman in the establishment of Opp. Party No.3 vide order dated 09.08.1991 under Annexure-1. It is contended that even though petitioner was allowed to continue on contractual wage basis as a part time Sweeper-cum-Night Watchman w.e.f. 09.08.1991, but he was never regularized in his services in terms of the stipulation contained in the Finance Department Resolution Dated 15.05.1997, so available under Annexure-2.

3.1. However, taking into account the fact that petitioner's engagement is prior to 12.04.1993 i.e. the cut-off date fixed by the Finance Department in its Resolution dated 15.05.1997 and pursuant to the Resolution dated 04.09.2012, so issued by the Finance



Department under Annexure-3, petitioner was given temporary status vide office order dated 26.03.2018 under Annexure-4 of Opp. Party No.2.

3.2. However, claim of the petitioner to get the benefit of regularization on the face of his continuance as a part time Sweeper-cum-Night Watchman w.e.f. 09.08.1991 when was not considered, he approached this Court by filing W.P.(C) No.21658 of 2022. This Court vide order dated 20.09.2022, when directed for consideration of the petitioner's claim in the light of the decisions of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka vs. Uma Devi (3)**, (2006) 4 SCC-1, **State of Karnatak vs. M.L. Keshari**, (2010) 9 SCC 247, **Amarkant Rai vs. State of Bihar & Others**, 2015 (8) SCC 265 and **Nihal Singh Vrs. State of Punjab**, 2013 (14) SCC 65, such claim of the petitioner was rejected vide the impugned order dated 23.12.2022 under Annexure-7.

3.3. Hon'ble Apex Court in the case of **Uma Devi** in Para-44 has held as follows:-



“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 instrumentalities 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 under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this judgement, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

3.4. Similarly Hon’ble Apex Court in the case of **M.L.**

Keshari in Para- 8 and 13 has held as follows:-

“8. Umadevi (3) casts a duty upon the Government or instrumentality concerned, to take steps to regularise the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi (3) 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).



13. The Division Bench of the High Court has directed that the cases of the respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi (3), is that the Zila Panchayat, Gadag should not undertake an exercise within six months, as a general one-time regularisation exercise, to find out whether there are daily-wage/casual/adhoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfil the requirements mentioned in para-53 of Umadevi (3). If they fulfill them, their services have to be regularised. If such an exercise has already been undertaken by ignoring or omitting the cases of Respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one-time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of para 53 of Umadevi (3), their services need not be regularised. If the employees who have completed ten years' service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts."

3.5. In the case of **Nihal Singh** in Para-35 to 38, Apex Court has held as follows:-

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

21. In the first instances, the petitioner and the other Election Commissioners were appointed when the work of the Commission did not warrant their appointment. The



reason given by Respondent 1 (Union of India), that on account of the Constitution (61st Amendment) Act reducing the voting age and the Constitution (64th Amendment) and (65th Amendment) Bills relating to election to the Panchayats and Nagar Paliks, the work of the Commission was expected to increase and, therefore, there was need for more Election Commissioners, cuts notice. As has been pointed out by Respondent 2, the work relating to revision of electoral roll on account of the reduction of voting age was completed in all the States except Assam by the end of July 1989 itself, and at the Conference of the Chief Electoral Officers at Tirupati. Respondent 2 had declared that the entire preparatory work relating to the conduct of the then ensuing general elections to the Lok Sabha would be completed by August in the whole of the country except Assam. Further the Constitution (64th and 65th Amendment) Bills had already fallen in Parliament before the appointments. In fact, what was needed was more secretarial staff for which the Commission was pressing, and not more Election Commissioners. What instead was done was to appoint the petitioner and the other Election Commissioner on 16.01.1989. Admittedly, further the view of the Chief Election Commissioner were not ascertained before making the said appointments. In fact, he was presented with them for the first time in the afternoon of the same day i.e, 16-10-1989.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finance is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in



further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.

37. We are of the opinion that neither the Governmnet of Punjab nor these public sector banks can continue such a practice consistent with their obligations to function in accordance with the Constitution. Umadevi (3) judgement cannot became a licence for exploitation by the State and its instrumentalities.

38. For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeal are accordingly allowed. The judgements under appeal are set aside.”

3.6. In the case of Amarkanti Rai, Hon’ble Apex Court in

Para-8, 9, 11 to 14 has held as follows:-

“8. Insofar as contention of the respondent that the appointment of the appellant was made by the Principal who is not a competent authority to make such appointment and is in violation of the Bihar State Universities Act and hence the appointment is illegal appointment, it is pertinent to note that the appointment of the appellant as night guard was done out of necessity and concern for the College. As noticed earlier, the Principal of the College vide letters dated 11-3-1988, 7-1-1993, 8-1-2002 and 12-7-2004 recommended the case of the appellant for regularisation on the post of night guard and the University was thus well acquainted with the appointment of the appellant by the then Principal even though the Principal was not a competent authority to make such appointments and thus the appointment of the



appellant and other employees was brought to the notice of the University in 1988. In spite of that, the process for termination was initiated only in the year 2001 and the appellant was reinstated w.ef. 3-1-2002 and was removed from services finally in the year 2007. As rightly contended by the learned counsel for the appellant, for a considerable time, the University never raised the issue that the appointment of the appellant by the Principal is ultra vires the rules of the BSU Act. Having regard to the various communications between the Principal and the University and also the educational authorities and the facts of the case, in our view, the appointment of the appellant cannot be termed to be illegal, but it can only be termed as irregular.

9. The Human Resources Development, Department of Bihar Government, vide its Letter dated 11-7-1989 intimated to the Registrar of all the Colleges that as per the settlement dated 26-4-1989 held between Bihar State University and College Employees' Federation and the Government it was agreed that the services of the employees working in the educational institutions on the basis of prescribed staffing pattern are to be regularised. As per sanctioned staffing pattern, in Ramashray Baleshwar College, there were two vacant posts of Class IV employees and the appellant was appointed against the same. Further, Resolution No. 989 dated 10-5-1991 issued by the Human Resources Development Department provides that employee working up to 10-5-1986 shall be adjusted against the vacancies arising in future. Although, the appellant was appointed in 1983 temporarily on the post that was not sanctioned by the State Government, as per the above communication of the Human Resources Development Department, it is evident that the State



Government issued orders to regularise the services of the employees who worked up to 10-5-1986. In our considered view, the High Court ought to have examined the case of the appellant in the light of the various communications issued by the State Government and in the light of the circular, the appellant is eligible for consideration for regularisation.

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11. Elaboration upon the principles laid down in Umadevi

(3) Case and explaining the difference between irregular and illegal appointments in State of Karnataka Vs. M.L Kesari, this Court held as under (ML Kesari case SSC p 250, para 7) 7. It is evident from the above that there is an exception to the general principles against 'regularisation enunciated in Umadevi (3). 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 persons 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.”



12. Applying the ratio of Umadevi (3) case, this Court in Nihal Singh v. State of Punjab directed the absorption of the Special Police Officers in the services of the State of holding as under: (Nihal Singh Case, SCC pp. 79-80, paras- 35-36)

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State. 36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the Various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in the banks to meet such additional burden Apparently no such demand has ever been made by the State. The result is the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period



of decades. It is also pertinent to notice that these banks are public sector banks

13. In our view, the exception carved out in para 53 of Umadevi (3)3 is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularised w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1.-1-2010.

14. Considering the facts and circumstances of the case that the appellant has served the University for more than 29. years of the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularise the services of the appellant retrospectively w.e.f. 3-1-2002 (the date on which he rejoined the post as per the direction of the Registrar)."

3.7. Learned counsel for the petitioner contended that since it is not disputed that petitioner is continuing as a part time Sweeper-cum-Night



Watchman in the establishment of Opp. Party No.3 w.e.f. 09.08.1991 and admittedly he was engaged prior to the cut-off date so fixed by the Finance Department i.e. on 12.04.1993, not only petitioner's claim to get the benefit of regularization is covered by the Resolution issued by the Finance Department on 15.05.1997, but also as per the decision of the Hon'ble Apex Court in the case of **Uma Devi** so relied on by this Court in its order dated 20.09.2022.

3.8. It is also contended that in view of the recent decisions of the Hon'ble Apex Court in the case of **Jaggo vs. Union of India & Ors., 2024 SCC OnLine SC 3826; Shripal & Anr. vs. Nagar Nigam, Ghaziabad, 2025 SCC OnLine SC 221**, as well as **Dharam Singh & Ors. vs. State of U.P. & Anr. (Civil Appeal No(s).8558 of 2018** and another decision of the Apex Court in the case of **Bhola Nath Vs. State of Jharkhand and Others, 2026 INSC 99**, petitioner's claim is required to be allowed.

3.9. View expressed by the Hon'ble Apex Court in the case of **Jaggo** in Par-22 to 25 and 27 reads as follows:-

"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 Declaration⁶ 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 judgement of the United State in the case of Vizcaino v. Microsoft Corporation⁷ 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.

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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.”

3.10. Hon’ble Apex Court in the case of *Shripal* in

Par-14, 15, 17 & 18(IV)has held as follows:-

“14. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment.

15. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature.

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17. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.

18.(IV) The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms.”

3.11. Placing reliance on the decision in the case of **Jaggo and Shripal**, Hon’ble Apex Court in the case of **Dharam Singh**, in Paragraph-13, 14, 15 & 17, 18, 19 & 20 has held as follows:

“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.

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

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 Judgement.

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 organise 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.”*

3.12. It is contended that in the recent decision of the Hon’ble Apex Court in the case of **Bhola Nath** so cited (supra), Hon’ble Apex Court in Para-13.5 to 14 of the judgment has held as follows:-



“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 fulfilment 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.”

3.13. It is accordingly contended that with quashing of the impugned order dated 23.12.2022 under Annexure-7, Opp. Party No.1 be directed to regularize the services of the petitioner as against the post of part time Sweeper-cum-Night Watchman.

4. Learned Addl. Standing Counsel on the other hand while supporting the impugned order, made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party No.1. It is contended that since petitioner is continuing as against a non-sanctioned post and petitioner was engaged initially without facing due selection process, petitioner is not eligible and entitled to get the benefit of regularization.

4.1. It is however fairly contended that in terms of the Finance Department Resolution issued on 04.09.2012, and the fact that petitioner was engaged prior to 12.04.1993, he has been conferred with



temporary status vide order dated 26.03.2018 under Annexure-4.

4.2. A further submission is also made that since number of persons similarly situated are continuing and none of such appointees have yet been regularized, petitioner is not eligible and entitled to get the benefit, which has been rightly rejected vide the impugned order. Reliance was placed to Para-12 of the counter affidavit which reads as follows:-

“12. That, it is humbly submitted that there are 619 numbers of Gpvt. Ayurvedic Dispensaries, 562 numbers Govt. Homoeopathic Dispensaries and 09 numbers of Govt. Unani Dispensaries functioning in the State. The existing Staffing pattern of each Govt. Ayurvedic / Homoeopathic / Unani Dispensary is as follows:-

- i. Ayurvedic / Homoeopathic / Unani Medical Officer - One*
- ii. Ayurvedic / Homoeopathic / Unani Assistant – One*
- iii. Part time Sweeper-cum-Night watchman – One*

The State Government has created required numbers of regular posts for Ayurvedic/ Homoeopathic / Unani Medical Officer and Ayurvedic/ Homoeopathic / Unani Assistant.

Similarly, 03 (three) types of Part Time Sweepers-cum-Night Watchmen are working In various Ayurvedic, Homoeopathic and Unani Dispensaries of the State under the administrative control of respective District Ayurvedic / Homoeopathic Medical Offices.

1st category of Part Time Sweepers-cum- Night Watchmen consists of five hundred thirty seven numbers (537 nos.), those were engaged prior to 12.4.1993 on dally wages basis and were conferred with "Temporary



status" as per Finance Department resolution No.31715/F, dt. 04.9.2012 and getting consolidate pay as fixed by the Finance Department (i.e. @Rs.8,910/- at present) with 5% annual increment each year.

2nd category of Part Time Sweepers-cum- Night Watchmen consists of four hundred and twenty seven numbers (427 nos.) working in various dispensaries of the State and getting their remuneration on daily wages basis, as per the minimum wages fixed by the Govt; of Odisha Labour and ESI Deptt. from time to time.

For the above two category of Part Time Sweeperscum-1- Night Watchmen, no post has been sanctioned /created in any Govt. Ayurvedic/Homoeopathic/Unani Dispensary of the State.

As regards 3rd category of Part Time Sweepers-cum-Night Watchmen is concerned, it is respectfully submitted that, Govt. ,in Health & F.W. Department have created 200 Nos. of Part Time Sweepers-cum- Night Watchmen posts (100 posts for Ayurvedic dispensaries + 100 posts for Homoeopathic dispensaries) vide their letter No, 40053/H, 40055/H, and 40051/H, & 40049/H, dt.20.11.2002 and their remuneration was fixed at @Rs.10,100/- per month as consolidated pay without any increment."

5. Having heard learned counsel for the parties and considering the submissions made, this Court finds that petitioner was engaged as a part time Sweeper-cum-Night Watchman in the establishment of Opp. Party No.3 vide order dated 09.08.1991. It is not disputed that since 09.08.1991, petitioner is continuing as such and in terms of the Finance Department Resolution dated 04.09.2012, he was conferred with temporary status vide office order dated 26.03.2018 under Annexure-4.



5.1. Since petitioner is continuing as a part time Sweeper-cum-Night Watchman w.e.f. 09.08.1991 and he has been conferred with temporary status vide order dated 26.03.2018 under Annexure-4, in view of the decision of the Hon'ble Apex Court in the case of **Uma Devi, M.L. Keshari, Amarkant Rai** and **Nihal Singh** and the recent decision in the case of **Jaggo, Shripal, Dharam Singh & Bhola Nath** so cited (supra), this Court is of the view that the ground on which petitioner's claim has been rejected is no more sustainable in the eye of law.

5.2. Therefore, while quashing the impugned order dated 23.12.2022 so issued under Annexure-7 by Opp. Party No.1, this Court directs Opp. Party Nos.1 and 2 to regularize the services of the petitioner as against the post of part time Sweeper-cum-Night Watchman in the establishment of Opp. Party No.3 without passing of an order in that regard within a period of 2(two) months from the date of receipt of this order.



6. The Writ Petition accordingly stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 4th May, 2026/Basudev

Signature Not Verified

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