



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.29481 of 2023

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

.....

Dillip Kumar Samal

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : Mr. S. Mallik, Advocate

For Opp. Parties : Mr. C.K. Pradhan, AGA

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:24.02.2026 and Date of Judgment:24.02.2026

Biraja Prasanna Satapathy, J.

1. Heard Mr. S. Mallik, learned counsel for the petitioner and Mr. C.K. Pradhan, learned Addl. Govt. Advocate for the State.

2. The present Writ Petition has been filed *inter alia* challenging rejection of the petitioner's claim to get the benefit of regularization so passed by Opp. Party No.1 vide his order dated 05.08.2023 under Annexure-9.



3. Learned counsel for the petitioner contended that petitioner was appointed as an adhoc Typist in the establishment of Opp. Party No.2 vide order of appointment issued on 23.03.1991 under Annexure-1. It is contended that petitioner was so appointed on adhoc basis against a regular vacant post and basing on such order, he was allowed to continue without any break in engagement.

3.1. Subsequently, vide office order dated 11.08.1995 under Annexure-3, petitioner was allowed to continue against the existing vacancy on 89 days basis with regular scale of pay along with D.A. and other allowances as sanctioned by the Govt. from time to time.

3.2. It is contended that on the face of such continuance on adhoc basis w.e.f. 23.03.1991, petitioner when was not regularized in his services, he approached the Tribunal by filing O.A. No.2167(C) of 1995. The Tribunal vide order dated 18.02.2013 under Annexure-7 passed the following order:-



“Considering the submission made by Sri Samal/the applicant in person so also after going through the contents of the O.A., in my considered view, even though the applicant is continuing as on date by virtue of an interim protection extended by this Tribunal, when cannot claim any edge over others who may apply for the post in case any advertisement is issued inviting applications for such post. Since the applicant was appointed on ad hoc basis for a particular period and allowed to continue in the post with certain terms till now by virtue of the order of this Tribunal, no direction can be issued to the respondent authorities to regularize the service of the applicant. As such the relief as has been sought for by the applicant in this O.A. cannot be entertained.

However, the respondent authorities are directed to conduct regular selection test, by way of inviting applications from the open along with other eligible candidates, subject to fulfilling the terms and conditions of the advertisement except the age criteria and if the applicant being overaged submits his application pursuant to such an advertisement, his application shall be accepted applying age relaxation clause, taking into account the number of years he has rendered his services and in case the applicant comes within the zone of consideration, on applying age relaxation clause as per Rules and found suitable for the post in the selection test, regular appointment order be issued in favour of him. Till then he will continue as before. The respondent. authorities are directed to take earlier steps for filling up the posts on regular basis preferably within a period of six months from the date of communication of this order.

It may not be out of place to mention here that as because the applicant is continuing in the post, because of the interim order of this Tribunal, he shall not be entitled to claim any other benefit in the selection test, except the benefit of age relaxation as per Rules.”

3.3. It is contended that pursuant to such order passed by the Tribunal, no regular selection process was ever undertaken by the State in filling up the post. Not only that challenge made to the said order by the present petitioner before this Court in W.P.(C) No.1477 of 2015 was also not entertained. It is contended that



since no step was taken to fill up the post on regular basis in terms of the order passed by the Tribunal under Annexure-7 and petitioner was allowed to continue on 89 days basis in terms of order dated 01.08.1995 under Annexure-3, petitioner once again made a claim to get the benefit of regularization.

3.4. As such claim of the petitioner was not considered, he approached this Court by filing W.P.(C) No.6994 of 2022. This Court vide order dated 11.04.2022, when directed for consideration of the petitioner's claim, the same was rejected vide the impugned order dated 05.08.2023 under Annexure-9.

3.5. Challenging such order and by the time the present Writ Petition was filed before this Court, petitioner had already attained the age of superannuation, having been retired from Govt. service, on 30.06.2023 so reflected in Annexure-11.

3.6. Learned counsel for the petitioner contended that since petitioner w.e.f. 23.03.1991 till 30.06.2023, continued on adhoc basis against a vacant regular post



of Typist in the establishment of Opp. Party No.3, petitioner's claim pursuant to the earlier order passed by this Court on 11.04.2022 in W.P.(C) No.6994 of 2022, could not have been rejected on the ground indicated in the said order.

3.7. It is further contended that since pursuant to the order passed by the Tribunal on 18.02.2013 under Annexure-7, no step was ever taken by the State to fill up the post on regular basis by following due procedure of law and petitioner was allowed to continue on adhoc basis all through, petitioner should have been regularized as against the said vacant regular post of Typist, prior to his retirement. But because of in-action of the Opp. Parties, petitioner was deprived to get the benefit of regularization prior to his retirement on 30.06.2023 under Annexure-11 and consequential release of all retirement benefits as due and admissible under OCS (Pension) Rules, 1992.

3.8. It is further contended that in Para-11 of the counter affidavit so filed by Opp. Parties, it has been



clearly admitted that petitioner continued against a regular post. Extract of Para-11 reads as follows:-

“11. That, in reply to the averments made in Paragraph-8 of the Writ Petition, it is submitted that Upper Indravati Hydro Electric Project, Khatiguda was taken over by OHPC Ltd., Bhubaneswar under Odisha Electricity Reforms Act. Like other employees of the State Government, the services of the petitioner was also placed at the disposal of the Corporation. The Engineer-in-Chief & Director Civil, OHPC Ltd., Bhubaneswar vide letter No.708/WE, dtd.16.11.1998 (Annexure-E/3) directed the Chief Construction Engineer Civil, Upper Indravati Hydro Electric Project, Khatiguda to allow him certain benefits besides opening his Service Book just to keep his Service Records. Hence, the then Administrative Officer of the Project opened his Service Book as a Record Book, not in the aim of regularizing his service in the Regular Establishment. The initial engagement of the Petitioner was in the regular establishment and not against any Job Contract Establishment or Work Charged Establishment.

As regard his enrolment as a member of GPF, it is humbly submitted that the petitioner applied to the authority to permit him to contribute to GPF. Accordingly, clarification was sought for from the Government vide letter No.CAMP/BBSR/29, dtd.27.01.1999 as to whether he is entitled to contribute to GPF. The Government of Odisha in the Department of Finance vide letter No.11197, dtd.20.03.1994 (Annexure-F/3) clarified that Adhoc employees on completion of one year of continuous service can contribute to GPF. He was therefore allowed to contribute to GPF. Mere opening of Service Book or contributing to GPF does not confer him the right to be absorbed as a Regular Government employee.”

3.9. Making all these submissions, learned counsel for the petitioner contended that in view of such long continuance w.e.f. 23.03.1991 to 30.06.2023 on adhoc basis and 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** so followed in the case of **Bhola Nath Vs. State of Jharkhand and Others**, 2026 INSC 99, petitioner is entitled to get the benefit of regularization and he be treated as a regular employee as on the date of his retirement on 30.06.2023 with extension of all service and financial benefits under OCS(Pension) Rules, 1992.

3.10. 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 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 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.”*

3.11. 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.”

4. Learned Addl. Govt. Advocate on the other hand while supporting the impugned order, made his submission contending *inter alia* that since petitioner all through continued on adhoc basis from the date of his appointment till he retired on 30.06.2023 and in the meantime he has already retired on 30.06.2023, petitioner is not eligible and entitled to get the benefit of regularization.

4.1. It is also contended that because of the interim order passed by the Tribunal in O.A. No.2167(C) of 1995, petitioner was allowed to continue and accordingly petitioner is not covered by the decision of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka vs. Uma Devi (3)**. Stand taken in Para-8 and 9 of the counter affidavit reads as follows:-

“8. That, in reply to the averments made in Paragraph - 5 of the Writ Petition, it is submitted that the present Petitioner was allowed to continue as Jr. Grade Typist on Adhoc basis against the post of vacant Junior Clerk under regular Establishment till the post is filled up by a



regular recruited candidate belonging to the category for whom the post is ear-marked according to the model roster in pursuance to the interim Order dtd.14.11.1995 passed in O.A. No. 2167(C) of 1995.

9. That, in reply to the averments made in Paragraph - 6 of the Writ Petition, it is submitted that the name of the petitioner finds place in the list of employees submitted to the Government Vide Order No.6049, dtd. 12.09.1995 (Annexure - D/3). It was clarified that the Petitioner was on roll as an Adhoc employee as on the date of submitting the data to the Government in Department of Water Resources consequent upon bifurcation of Upper Indravati Project into two wings i.e. Upper Indravati Hydro Electric Project & Upper Indravati Irrigation Project. The Project was under the erstwhile Irrigation & Power Department prior to 1993. In the year 1993, the erstwhile I & P Department was divided in two Departments i.e. Department of Water Resources & Department of Energy. The employees working in Civil Construction works like Dams, Dykes, Power House, Tunnels, Tail Race and Head Race etc. came under the Department of Energy & the employees working in construction of Canals came under the Department of Water Resources. This data was submitted to the Department of Water Resources as required by the Government. Submission of data of employees to the Government in which the name of the petitioner finds place does not confer on him any right for regularization of service. Regarding reflection of his name as Junior Clerk category (against the existing vacant post) with remarks mentioned that, appointed on Adhoc basis."

5. Having heard learned counsel for the parties and considering the submission made, this Court finds that petitioner was initially appointed as a Jr. Grade Typist on adhoc basis as against the post of Jr. Grade Typist in the establishment of Opp. Party No.3 vide order dated 23.03.1991 under Annexure-1. Subsequently, vide order dated 01.08.1995, petitioner was allowed to continue on 89 days basis with regular scale of pay and



usual DA and other allowances as sanctioned by the Govt. from time to time.

5.1. On the face of such continuance on adhoc basis, when petitioner was not regularized, he approached the Tribunal by filing O.A. No.2167(C) of 1995. The Tribunal vide order dated 18.02.2013 while disposing the matter, permitted the State authorities fill-up the post in question on regular basis by inviting applications from eligible candidates. But no such step was taken by the State at any point of time to fill-up the post on regular basis in complying the direction of the Tribunal. Petitioner however was allowed to continue in view of the nature of order passed by the Tribunal under Annexure-7.

5.2. When no step was taken to fill up the post on regular basis by inviting applications from amongst eligible candidates, petitioner again approached this Court by filing W.P.(C) No.6994 of 2022, claiming benefit of regularization. This Court vide order dated 11.04.2022, when directed for consideration of the



petitioner's claim, the same has been rejected vide the impugned order dated 05.08.2023 under Annexure-9. But by the time such rejection was made, petitioner had already attained the age of superannuation, having retired on 30.06.2023.

5.3. This Court taking into account the continuance of the petitioner on adhoc basis w.e.f. 23.03.1991 and non-compliance of the direction of the Tribunal so contained in its order dated 18.02.2013 under Annexure-7 in filling up the post on regular basis, and the decisions in the case of **Jaggo, Shripal, Dharam Singh** as well as **Bholanath** so cited (supra), is of the view that petitioner was eligible and entitled to get the benefit of regularization, as he was continuing against a regular vacant post so admitted in Para-11 of the counter affidavit from his initial appointment.

5.4. In view of the above discussion, while quashing order dated 05.08.2023 under Annexure-9, this Court directs Opp. Party No.1 to treat the petitioner to have retired from his service as a regular employee on



30.06.2023 and extend the retiral benefits including pension as provided under OCS(Pension) Rules, 1992. This Court directs O.P. No.1 to complete the entire exercise within a period of 4(four) months from the date of receipt of this order. If any admitted dues has not been paid in terms of Annexure-12, the same be also released within the aforesaid time period.

6. The Writ Petition stands disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 24th February, 2026/Basudev