



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.42311 of 2023

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

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Khirod Chandra Dhir **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : Mr. B.S. Das, Advocate

For Opp. Parties : Mr. P.P. Behera, ASC

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:25.02.2026 and Date of Judgment:25.02.2026

Biraja Prasanna Satapathy, J.

1. Heard Mr. B.S. Das, learned counsel for the Petitioner and Mr. P.P. Behera, learned Addl. Standing Counsel for the State.

2. The present Writ Petition has been filed *inter alia* challenging order dated 22.06.2022, so passed by Govt.-O.P. No.1 under Annexure-8. Vide the said order,



claim of the Petitioner to get the benefit of absorption in the regular establishment has been rejected.

3. Learned counsel for the Petitioner contended that Petitioner was engaged as a daily wage Cook w.e.f. 01.11.1989 so reflected under Annexure-1-Series.

3.1. It is contended that on the face of such continuance as a daily wage cook w.e.f. 01.11.1989, Petitioner was never regularized in his services. But in terms of the Resolution issued by the Finance Department on 04.09.2012 under Annexure-5, Petitioner was granted with temporary status vide order dtd.26.11.2012 under Annexure-6.

3.2. Even though Petitioner was granted with temporary status vide order dtd.26.11.2012 under Annexure-6 and in the said order, the date of initial engagement of the Petitioner as a daily wager was shown as 01.01.1989, but when no step was taken to regularize him, Petitioner approached this Court by filing W.P.(C) No.32549 of 2021. This Court vide order dtd.26.10.2021 under Annexure-7, when directed for



consideration of the Petitioner's claim in the light decision of the Hon'ble Apex Court in the case of ***Uma Devi, (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***, without proper appreciation of the said decisions and the long continuance of the Petitioner as a DLR cook w.e.f. 01.01.1989 and as temporary employee w.e.f. 26.11.2012, Petitioner's claim for regularization was rejected vide the impugned order dtd.22.06.2022 under Annexure-8.

3.3. It is contended that taking into account the long continuance of the Petitioner as a DLR cook w.e.f. 01.01.1989 and as a temporary cook w.e.f. 26.11.2012 as per order under Annexure-6, 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, the ground on which petitioner's claim has been rejected, is no more sustainable and Petitioner is eligible for his absorption in the regular establishment.

3.4. View expressed by the Hon'ble Apex Court in the case of **Jaggo** in Para-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 Corporation*⁷ 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.”

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

Para-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.”*

3.6. 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.”*

3.7. 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. Mr. P.P. Behera, learned Addl. Standing Counsel for the State on the other hand contended that taking into account the continuance of the Petitioner as a DLR cook w.e.f 01.01.1989 and basing on the Resolution issued by the Finance Department on 04.09.2012 under Annexure-5, Petitioner was conferred with temporary status vide office order dtd.26.11.2012 under Annexure-6. Taking into account the Revised Sanctioned Strength of Composite Sports and Youth Services Department so issued vide Notification dtd.03.12.2014 under Annexure-A/1, since Petitioner is not coming within the vacancy meant for the post in question, Petitioner's claim was considered and rejected vide the impugned order dtd.22.06.2022 under Annexure-8.

4.1. It is further contended that since Petitioner has already been granted with temporary status vide order dtd. 26.11.2012 under Annexure-6 and he is getting regular scale of pay with T.A and other allowance, Petitioner is no way prejudiced, because of non-regularization of his services.



4.2. It is accordingly contended that no illegality or irregularity can be found with the impugned order dtd.22.06.2022 so issued by Opposite Party No.1 under Annexure-8.

5. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that Petitioner was engaged as a daily wage cook w.e.f. 01.01.1989. Such engagement of the Petitioner as a daily wages cook w.e.f. 01.01.1989 is also not disputed, as taking into account such date of engagement of the Petitioner, Petitioner was conferred with the temporary status vide order dtd.26.11.2012 under Annexure-6.

5.1. Since it is not disputed that Petitioner continued as a daily wage cook we.f. 01.01.1989 and as a temporary cook w.e.f. 26.11.2012, this Court in view of the decisions of the Apex Court in the case of **Jaggo, Shripal and Dharam Singh** and the decision in the case of **Bhola Nath** so cited (supra), is of the view that Petitioner is eligible and entitled to get the benefit of



regularization and rejection of his claim vide the impugned order is not sustainable in the eye of law.

6. Therefore, this Court while quashing the impugned order dtd.22.06.2022 so passed by Opposite Party No.1 under Annexure-8, directs Opposite Party No.1 to regularize the services of the Petitioner by passing an appropriate order within a period of two (2) months from the date of receipt of this order.

7. The Writ Petition stands disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 25th February, 2026/Subrat