

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 14600/2020

Kedar Singh S/o Late Shri Bairon Singh, Aged About 38 Years,
R/o Kherli Darwaja, Bhandarej, District Dausa

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Medical And Health Department, Secretariat, Rajasthan, Jaipur
2. Director, Medical And Health (Public Health), Medical And Health Services, Swasthya Bhawan, Tilak Marg, Jaipur

-----Respondents

For Petitioner(s)	:	Mr. Mukesh Choudhary
For Respondent(s)	:	Mr. Yashwant Singh for Mr. Archit Bohra, AGC

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

23/03/2026

1. The instant writ petition is filed by the petitioner with following prayer:-

"It is prayed that writ petition of the petitioner may kindly be allowed and by an appropriate writ order or direction, the Hon'ble Court may be pleased to quash and set aside the order dated 02.03.2020 by which services of the petitioner has been terminated, further direct to respondent to provide the salary for the period petitioner has worked in the department and direct the respondents to provide minimum salary to the petitioner which is being paid to other employees working on the same post and also consider the case of petitioner for regularization of his services.

Any other order or direction, which this Hon'ble Court may deem fit and proper also be passed in favour of the petitioner."

2. Learned counsel for the petitioner while placing reliance upon judgment in case of **Pawan Kumar and Ors. Vs. Union of India and Ors. reported in 2026 INSC 156** submits that the present petitioner was appointed on contract basis on 01/10/2004 and since then he worked in the respondent organization. He further submits that the petitioner was appointed on post of Computer Operator and when the respondents tried to disturb his services, he has filed a S.B. Civil Writ Petition No. 7123 of 2010 and by order dated 10/04/2012, the respondents were directed to re-engage the petitioner. He also submits that despite a stay order and direction, the services of the petitioner were discontinued on 02/03/2020. He also submits that the petitioner has served more than 10 years and he is eligible for regularization.

3. Aforesaid contentions were opposed by learned counsel for the respondents and he submitted that the petitioner may submit a representation which shall be considered by the respondents.

4. Heard learned counsel for the parties and perused the material placed on record. Also considered the judgment as referred by learned counsel for the petitioner.

5. The brief facts of the case are that the petitioner was appointed vide order dated 01/10/2004 as Computer Operator, (man with machine). In year 2010, due to certain disturbance and to adjust Mohanlal Yadav in place of the petitioner, the aggrieved petitioner has filed S.B. Civil Writ Petition No. 7123/2010, which was disposed by a Coordinate Bench on 10.04.2012 with following order:-

"It is not in dispute that petitioner's employment was on specific terms and conditions on contractual basis. However, his appointment

remained in operation till the year 2010. It is vide order dated 13.4.2010 (Annx.11) that new incumbent was appointed on contractual basis. In the aforesaid background, it remains nothing but a case of replacement of contractual employee by another set of contractual employee, which is impermissible in view of catena of judgments of the Hon'ble Apex Court and this court. In fact, a contractual or temporary employee can be replaced by regularly selected candidate only. In view of aforesaid, discontinuation of petitioner is illegal rather, his replacement, by another set of contractual employee goes against verdict of the Hon'ble Apex Court.

In the aforesaid background, the writ petition is disposed of with direction to respondents that if they are in need of Computer Operator with Computer, then petitioner be reengaged. In any case, respondents are restrained to engage any person on contractual basis unless petitioner is given preference for his contractual employment. Respondents would, however, be at liberty to make regular appointment and petitioner may also compete, if eligible with other candidates. Stay application is also disposed of."

6. The petitioner has claimed that in garb of circular dated 11.07.2018 issued by the Department of Finance, the services were removed but vide order dated 03.11.2018 in second stay application in S.B. Civil Writ Petition No. 9992/2018, the termination was stayed. S.B. Civil Writ Petition No. 9992/2018 was considered on 18.11.2020 and the petitioner was given a liberty to avail remedy to challenge termination order dated 02.03.2020 by independent litigation or amending the writ petition. The petitioner has filed the current writ petition.

7. Since learned counsel for the parties agreed to dispose of the writ petition at this stage, therefore, we are disposing of the writ petition.

8. In case of **Pawan Kumar and Ors. Vs. Union of India and Ors.** (supra), Hon'ble Supreme Court has referred decision in case of **Ravi Verma and Ors. Vs. Union of India and Ors. Civil Appeal Nos. 2795-2796 of 2018** vide Judgment dated 13.03.2018, **Jaggo Vs. Union of India and Ors. reported in 2024 INSC 1034**, and **Raman Kumar and Ors. Vs. Union of India and Ors. : Civil Appeal No. 4146/2023** and observed as under:-

"9. Besides the aforesaid aspects, we find that the law laid down by this Court in Jaggo (supra) supports the case of the appellants in their prayer for regularization. In paragraphs 13, 20, 21 and 26, it has been held as under:

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

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

Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgement of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors. 5, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgement have been reproduced below:

"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra). 7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case..."

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

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

9. A Division Bench of this court in case of **Badrilal versus State of Rajasthan and others : DBSAW No.937/2022**, after considering several judgments of Hon'ble Supreme Court, has observed as under:-

"8. We need not further delve on the said issue at our level after the pronouncement of the Apex Court and conclude that the action of the respondents deserves to be deprecated. The appellant who has attained superannuation would be entitled to be considered as

regularized on the post on completion of 10 years of service. His pay and allowances shall accordingly be calculated and actual arrears of salary after deducting daily wages amount paid to him shall be released within the period of three months. The respondents shall also make pay fixation including the benefits of ACP applicable on completion of 10, 20 and 30 years of service and pay the arrears. The pension shall also be calculated and accordingly released along with all other retiral benefits after deducting the benefits which have been released to the appellant which may include gratuity amount. The entire exercise shall be conducted within a period of three months. The appellant would also be entitled to receive interest on the arrears @ 6% per annum. So far as pension and retiral benefits are concerned."

10. Having considered aforesaid, the material on record clearly indicate that the petitioner was initially given a protection by this Court on 10.04.2012 and thereafter on 03.11.2018. The material on record indicates that order dated 02.03.2020 is passed when the S.B. Civil Writ Petition No. 9992/2018 was pending. The second stay order passed on 03.11.2018 indicate that the respondents were restrained from passing any adverse order during pendency of the writ petition. Therefore, the order dated 02.03.2020 is passed clearly in breach of the stay order, thus, the order dated 02.03.2020 is liable to be set aside. However, the case of the present petitioner is required to be considered by the respondents in light of the judgments as referred hereinabove. Therefore, a liberty is granted to the petitioner to submit a representation to the respondents.

11. In view of the discussion made herein above, the order dated 02.03.2020 whereby the services of the petitioner were terminated is hereby quashed and set aside. The petitioner is given a liberty to submit a representation to the respondents within a period of 45 days from the date of receipt of copy of the order and after receipt of the representation, the respondent shall consider the representation in light of the judgments as referred herein above. The respondent shall decide the representation within a period of 30 days from the date of receipt of representation under intimation to the petitioner.

12. With the aforesaid, the writ petition stands disposed with pending application, if any.

(ASHOK KUMAR JAIN),J