



IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE AMRITA SINHA

AND

THE HON'BLE JUSTICE BISWAROOP CHOWDHURY

WP.CT/53/2025

HON'BLE LIEUTENANT GOVERNOR,

A & N ISLANDS AND OTHERS

... PETITIONERS

VS.

SHRI P. KATHIRESAN

... RESPONDENT

For the petitioners : Mr. Rakesh Kumar

For the respondent : Mr. Gopala Binnu Kumar
Ms. Vinita Devi

Heard and Reserved on : August 28, 2026

Judgment delivered on : September 03, 2026

Judgment uploaded on : September 03, 2026

AMRITA SINHA, J.

1. The order dated 23rd July, 2025 passed by the learned Central Administrative Tribunal in O.A. No. 351/133/2016(AN) is impugned in the instant writ petition.

2. The issues framed by the learned Tribunal for adjudication were:-



- (i) Whether the applicant has requisite qualification for regularization of his services?
- (ii) Whether the nature of applicant's appointment makes him eligible for regularization?

3. By the impugned order, the learned Tribunal was pleased to direct the petitioners to regularize the service of the respondent from 25th September, 1996, the date he was engaged initially as Daily Rated Mazdoor (DRM) in the post of Multi Tasking Staff (MTS) with consequential notational benefits, without payment of back wages, if any, within a stipulated period of time.

4. The instant writ petition at the instance of the authorities is primarily on the ground that the respondent was engaged not against any regular sanctioned post of the department, but against temporary capacities on part time and contract basis. Such type of engagement ought not to be directed to be regularized.

5. The impugned order is contrary to the law laid down by the Hon'ble Supreme Court in the matter of **Secretary, State of Karnataka and Others vs. Umadevi (3) and Others** reported in **(2006) 4 SCC 1**.

6. The respondent does not possess the requisite qualification for appointment in the post of MTS as per the recruitment rules. There



are several similarly placed staff who may seek similar relief if the prayer of the respondent seeking regularization is allowed.

7. In support of such submission, learned advocate representing the petitioners relies on the judgment delivered by the Hon'ble Supreme Court in the matter of Umadevi (supra) and the judgment delivered by the Hon'ble Division Bench of this Court on 20th December, 2021 in WP.CT/51/2020 in the matter of ***The Lieutenant Governor and others vs. P. Kathiresan and another (2021:CHC-PB:104-DB)***.

8. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Jagdish Prasad and Others vs. P.M. Manoj Kumar and Others*** reported in **(2026) SCC OnLine SC 970**. The petitioners also rely on the order dated 19th November, 2019 passed by the Hon'ble Supreme Court in ***Civil Appeal Nos. 2155-2156/2010*** in the matter of ***Tejeswara Rao and Others vs. Union of India and Others***.

9. The petitioners pray for setting aside the impugned order of the learned Tribunal.

10. Per contra, learned counsel representing the respondent-staff opposes the submissions and prayer of the petitioners. It has been submitted that the respondent was initially engaged on 25th September, 1996 and since then he is made to work by the



authority on regular basis. The service rendered by the respondent is of perennial in nature and the respondent ought not to be exploited without providing the consequential service benefits.

11. It has been submitted that when the respondent was engaged as DRM, he possessed the requisite eligibility for such engagement. The post of MTS was not available at that point of time. It is only later on, after the recruitment rules for the post of MTS was promulgated, the requirement of possessing educational qualification of class -X pass came into force.

12. The issue of not possessing the requisite qualification for regularization of the respondent in the post of MTS was decided by the learned Tribunal on 27th February, 2023 in the Original Application filed by the respondent. The learned Tribunal, upon relying on the judgment passed by the Hon'ble High Court on 20th September, 2021, in WP.CT/51/2020 clearly held that the educational qualification required at the relevant time when the staff is engaged needs to be considered for the purpose of considering the claim of regularization and not the higher educational qualification which was introduced subsequent to his initial date of engagement. The learned Tribunal was pleased to direct the authority to re-examine his claim for regularization of service in line with the observation made by the Hon'ble High Court in WP.CT/51/2020.



13. The order dated 27th February, 2023 was assailed by the respondent-staff before the Hon'ble High Court by filing WP.CT/61/2023. The said writ petition stood disposed of by a coordinate Bench of this Court on 23rd November, 2023 directing the learned Tribunal to decide the issue with regard to the nature of employment of the respondent within a stipulated time period.

14. It has been argued that the issue of not possessing requisite qualification for being regularized as MTS, cannot be raked up all over again to thwart the claim of regularization of the respondent.

15. Specific case of the respondent is that he was engaged in September 1996 on daily rated basis for a period of three months and after that his service stood extended regularly. He was thereafter engaged on contractual basis on a consolidated pay till the implementation of the recruitment rules in the year 2012. On consideration of his representation seeking reinstatement as Chowkidar, fresh engagement letter was issued in his favour in January, 2014 with a consolidated pay. Since then, the respondent is still in service and is pursuing his claim for regularization since 2012.

16. Learned advocate representing the respondent submits that the engagement of the respondent cannot be said to be illegal in any manner. Service of the respondent stood extended by the authority



only after being satisfied with his performance. Not regularizing his service, despite rendering dedicated service to the Administration, will result in gross injustice to him.

17. Prayer has been made by the respondent to dismiss the writ petition by affirming the order passed by the learned Tribunal. In support of such prayer, learned advocate for the respondent relies on the judgment delivered by the Hon'ble Supreme Court in the matter of :

- (i) ***Jaggo vs. Union of India*** reported in **(2024) SCC OnLine SC 3826.**
- (ii) ***Vinod Kumar and Others vs. Union of India*** reported in **2024 INSC 332.**
- (iii) ***Union of India Rep by Government of Puducherry and Another vs. K. Velajagan and Others*** reported in **(2025) SCC OnLine SC 837.**
- (iv) ***Dharam Singh and Others vs. State of UP*** reported in **(2025) SCC OnLine SC 1735.**
- (v) ***Bhola Nath vs. State of Jharkhand and Others*** reported in **(2026) SCC OnLine SC 129.**
- (vi) ***Mohammad Sagir and Others vs. Nagar Nigam Kanpur*** reported in **(2026) SCC OnLine SC 473.**



(vii) Sukhendu Bhattacharjee and Others vs. State of Assam and Others reported in **(2026) SCC OnLine SC 909**.

18. We have heard and considered the rival submissions made on behalf of both the parties and have perused the materials on record.

19. It appears that the respondent is persistently pursuing his claim for regularization since 2012. He was continuously serving as Chowkidar on and from his initial date of engagement on 25th September, 1996 till 29th February, 2012. He was not allowed to work on and from 01st March, 2012, but after agitation was made by similarly placed staff, the authority restored service of the respondent with effect from 05th March, 2012 by issuing formal order on 13th March, 2012. He was again terminated from service on 11th April, 2012.

20. The respondent claims that even though the engagement was contractual and time bound, but the respondent was made to work in the same manner as that of a regular employee. The respondent further claims that he was made to work for more than twelve hours a day despite, at times, issuing engagement letter for service on part time basis. He was also made to work on public holidays and other executive holidays, but no payment was made for his service during the holidays. When the respondent was engaged as Chowkidar in



the hostel campus of the Teachers' Training Institute, his duty hours were from 02.00 PM to 10.00 PM. He also worked in the girls' hostel and campus.

21. The service book of the respondent was prepared by the authority mentioning his designation as Chowkidar on contractual engagement on consolidated pay and his educational qualification was mentioned as IXth standard. His medical examination was also conducted and he was found medically fit for duty. His service book records the period of earned leave. Despite being a contractual staff, the CCS Leave Rules, 1972 was invoked for maintaining and granting earned leave to the respondent. He was granted overtime allowances and also paid bonus.

22. In 2009, the respondent sought for regularization of service or increase in his monthly consolidated pay of Rs. 3,000/- per month which he was receiving. His prayer remained unheeded by the authority.

23. His service stood terminated on and from 01st March, 2012 but he was reinstated on 05th March, 2012 and again terminated on 11th April, 2012. Challenging his termination, the respondent filed Original Application before the learned Tribunal being O.A. No. 351/107/AN/2012. During pendency of the Original Application, the authority engaged the respondent as DRM on a consolidated pay



of Rs. 5,000/- per month. The engagement letter clearly stipulated that DRM engagement will not give rise to any claim/right in future for regular/contract/part time appointment under the Administration.

24. The recruitment rules for engagement to the post of Chowkidar which was prevailing at the time of his initial engagement required the essential qualification of passing VIIIth standard from a recognised school/institute. The respondent possesses the educational qualification of IXth standard. The Administration published the recruitment rules for the post of MTS in the Department of Education on 28th June, 2012. It is under the new recruitment rules that the educational qualification to pass secondary school examination from a government recognised board or institution was made essential.

25. Admittedly, the respondent does not have the minimum educational qualification for engagement as MTS under the recruitment rules, 2012. It is, however, noticed that the rules contain a power to relax the provision of the rules to any class or category of persons. The power to relax lies with the Lieutenant Governor, Administrator, A & N Islands.

26. The learned Tribunal, despite noticing, that the respondent was serving in the post of Chowkidar, was pleased to direct



appointment of the respondent as MTS. For implementing the order passed by the learned Tribunal, the authority ought to have invoked the provision for relaxation which is provided in the recruitment rules.

27. It is not that there is no scope for relaxation of the provisions of the rules. Opportunity of relaxation has been provided only for retaining experienced staff in service who may not possess all the requisite qualifications and criteria prescribed in the rules. The same implies that, even though the age limit and the other qualifications for recruitment have been notified, the same may not be mandatorily applicable and the same may be relaxed depending upon the facts and circumstances of a subject case.

28. Not possessing the requisite educational qualification for appointment as MTS was considered by the Court in the writ petition filed by the respondent in WP.CT/61/2023. In the order dated 29th November, 2023 passed in the said matter, the Court took note of the submission made by the learned counsel representing the Administration that in view of the recent development with regard to regularization of DRM/Casual employees, the staff may apply for regularization under the scheme to be framed by the Administration.



29. The Court also took note of the assurance and undertaking given before the Hon'ble Supreme Court on 14th August, 2023 in ***Civil Appeal No. 5014 of 2023 (Admiral D.K. Joshi, the Hon'ble Lieutenant Governor, A & N Islands and another vs. Andaman Sarvajanik Nirman Vibhag Mazdoor Sangh and another)*** that upon fulfillment of the necessary qualification prescribed in the recruitment rules prevalent at the time of initial appointment would continue as part of the scheme for regularization. Upon such consideration, the Court was of the opinion that the minimum qualification criterion of the respondent is fulfilled. The Court found the respondent to be eligible for consideration for regularization as per the scheme to be framed by the Administration. The Court disposed of the writ petition by directing the Tribunal to decide the nature of his employment.

30. The opinion formed by the Court holding the respondent to be eligible for regularization, despite not possessing the educational qualification of Xth standard, was accepted by the authority and the order of this Court was not challenged before any superior forum. The order of the Court, accordingly, attained finality. Relying on such opinion, the Tribunal passed order on 27th February, 2023 that the educational qualification required at the relevant time when the staff is engaged needs to be considered for the purpose of



considering the claim for regularization and not the higher qualification introduced subsequently.

31. We are of the considered opinion that lack of minimum educational qualification required for consideration of the prayer for regularization as MTS under the recruitment rules, 2012 cannot be a valid ground to oppose the prayer for regularization of the respondent. It has also to be kept in mind that, the designation MTS is a mere re-designation of the Group -C, non ministerial, non gazetted post which was prevailing prior to implementation of the recruitment rules, 2012.

32. The next ground for opposing the prayer for regularization is that the respondent was not engaged against any sanctioned post. The very fact that the authority maintained a service book of the staff and credited leave to him by invoking the CCS Rules, 1972 clearly implies that the nature of service provided by the respondent was akin to a regular staff engaged in a sanctioned post. Extracting regular service from an employee, by not providing the consequential benefits in respect of the subject post, is a form of exploitation which is a bar under the Constitution.

33. There is no allegation with regard to the performance of the respondent. It is only on technical reasons that the authority refuses to grant appropriate relief to the respondent. The



submission of opening flood gates, if the prayer of the respondent is allowed, ought not to be a reason to provide relief to a litigant if he is entitled to the same under the provisions of law.

34. The learned Tribunal took note of the engagement of the respondent and has set out a tabular chart in the impugned order wherefrom it appears that, initially the respondent was engaged on daily rated basis, thereafter on part time basis and also on contractual basis. The Tribunal took note of the weak bargaining position of the respondent. It was noted that though the engagement letter of the respondent disclosed about part time contract, but he was actually made to work full time. The Tribunal came to a conclusive finding that the respondent continued to be engaged on full time basis.

35. The order passed by the Hon'ble Supreme Court in the matter of Tejeswara Rao (supra) deals with the issue of promotion. The same does not relate to regularization. The rules that were considered to arrive at the subject finding is not applicable in the present case. The facts of present case also do not fit in to the facts of the referred case. Thus, reliance on Tejeswara Rao (supra) does not come to the aid of the petitioners.

36. Jagdish Prasad (supra) relied upon by the petitioners also does not apply in the facts and circumstances of the present case.



The cited case deals with the issue of promotion and the ratio laid down in the said case cannot be made applicable in the facts and circumstances of the instant case.

37. In Jaggo (*supra*) the Hon'ble Supreme Court categorically laid down that the nature of the work performed rather than the label assigned to the worker, should determine the employment status and their corresponding rights and benefits. The Court highlighted the judiciary's role in rectifying misclassifications and to ensure that the workers receive fair treatment. The Court held that the government departments should lead by examples in providing fair and stable employment.

38. The Court was of the opinion that engaging workers on 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 principle of justice and fairness. The Court directed regularization of service.

39. In Vinod Kumar (*supra*) the Hon'ble Supreme Court held that the essence of employment and the right thereof cannot be



determined by the initial terms of appointment. The continuous service of the employees performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors regular recruitment, constitute a substantive departure from the temporary and scheme specific nature of their initial engagement. 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. The Court directed regularization of the employees.

40. In *Velajagan* (supra), the Hon'ble Supreme Court reiterated the proposition laid down in *Shripal* (supra) that *Umadevi* (supra) cannot be used as a shield to justify exploitative engagement persisting for years without the employer undertaking legitimate recruitment process to deny relief of regularization.

41. In *Dharam Singh* (supra), the Hon'ble Supreme Court observed that the practices of long term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. The observations in *Shripal* (supra) and *Velajagan* (supra) were reiterated once again. The Court directed regularization and creation of supernumerary posts along with pay protection. A compliance affidavit was directed



to be filed by the respondents for ensuring compliance of the direction passed by the Court.

42. In *Bhola Nath* (supra), the Hon'ble Supreme Court directed regularization of the contractual employees. The Court concluded that the respondent-State is not justified in continuing contractual employees on sanctioned vacant posts for over a decade under the nomenclature of contractual engagements and thereafter denying them consideration for regularization. The Court held that contractual stipulation 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. The State, as a model employer, cannot rely on contractual labels or mechanical application of *Umadevi* (supra) to justify prolonged ad-hocism or discard long serving employees in a manner inconsistent with fairness, dignity and constitutional governance.

43. In *Mohammad Sagir* (supra), the Hon'ble Supreme Court held that each case is to be decided on its own facts. In a case, where engagement is for a substantial length of time, a presumption arises that the work for which the workmen is engaged is of a perennial nature and there exists a vacant post. It is difficult to accept that



workmen are engaged as substitutes for regular workers if they have worked for a long period of time.

44. In Sukhendu (supra) the Hon'ble Supreme Court, after noticing that the workers discharged their duties over a prolonged period of time, directed regularization even though they were not appointed against sanctioned posts and the decision in Umadevi (supra) prohibits such regularization. The Court was of the considered view that reliance on Umadevi (supra) for not regularizing the service of the workmen is misplaced.

45. In view of the discussions made hereinabove, we are not inclined to interfere with the order passed by the learned Tribunal. The time limit to comply the order passed by the learned Tribunal is, however, extended for a period of ninety days from date.

46. WP.CT/53/2025 stands dismissed. There shall, however, be no order as to costs.

47. All parties are directed to act on a server copy of this judgment duly downloaded from the official website of this Court.

(AMRITA SINHA, J.)

I agree.

(BISWAROOP CHOWDHURY, J.)