

Reserved on : 14.02.2025

Pronounced on : 20.02.2025

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.100556 OF 2024 (S-RES)

R

BETWEEN:

- 1 . SRI ANANDU
S/O RAMACHANDRA GAONKAR
AGED ABOUT 58 YEARS
WORKING AS LITERATE ASSISTANT
PANCHAYAT RAJ ENGINEERING SUB-DIVISION
TALUK: ANKOLA
DISTRICT: UTTARA-KANNADA – 581 314.
- 2 . SRI ISHWAR
S/O URIYA NAIK
AGED ABOUT 54 YEARS
WORKING AS JUNIOR ENGINEER
PANCHAYAT RAJ ENGINEERING SUB-DIVISION
TALUK: ANKOLA
DISTRICT: UTTARA-KANNADA – 581 314.

... PETITIONERS

(BY SRI VINAYKUMAR BHAT, ADVOCATE AND
SRI RAVI HEGDE, ADVOCATE)

AND:

- 1 . THE PRINCIPAL SECRETARY

GOVERNMENT OF KARNATAKA
RURAL DEVELOPMENT AND PANCHAYAT RAJ
VIKAS SOUDHA, BENGALURU – 560 001.

- 2 . THE EXECUTIVE ENGINEER
PANCHAYAT RAJ ENGINEERING DIVISION
KARWAR, DISTRICT: UTTARA-KANNADA – 581
301.
- 3 . THE CHIEF EXECUTIVE OFFICER
ZILLA PANCHAYAT, KARWAR
DISTRICT: UTTARA-KANNADA – 581 301.
- 4 . THE ASSISTANT EXECUTIVE ENGINEER
PANCHAYAT RAJ ENGINEERING DIVISION
ANKOLA, DISTRICT: UTTARA-KANNADA – 581
301.

... RESPONDENTS

(BY SMT. KIRTI LATA R. PATIL, HCGP FOR R1, R2 AND R4;
SRI VISHWANATH HEGDE, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT
OF MANDAMUS DIRECTING THE RESPONDENTS TO REGULARIZE
THE SERVICES OF THE PETITIONERS FROM THE DATE WHEN
THEY COMPLETED THE 10 YEARS OF SERVICES WITH ALL
FINANCIAL BENEFITS, BY FIXING OUTER LIMIT AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 14.02.2025, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are before this Court seeking a direction by issuance of a writ in the nature of *mandamus* to regularize their services from the date on which they completed 10 years of service with all consequential benefits.

2. Heard Sri Vinaykumar Bhat, learned counsel appearing for the petitioners, Smt. Kirtilata R. Patil, learned High Court Government Pleader appearing for respondents 1, 2 and 4 and Sri Vishwanath Hegde, learned counsel appearing for respondent No.3.

3. Sans details, facts in brief, germane, are as follows:-

The 1st petitioner joins the services of the respondents in the Department of Rural Development and Panchayat Raj, particularly in the Panchayat Raj Engineering Division as a Literate Assistant on 12-08-1986. It is the averment in the petition that it was against a sanctioned vacant post. Likewise, the 2nd petitioner joins the service of the same Department as a Junior Engineer on 06-09-1993. It is the averment that he was also appointed against a sanctioned vacant post. Both the

petitioners join as daily wagers and did have the qualifications to hold the posts. The 1st petitioner completed 10 years of service in the year 1996 and likewise, the 2nd petitioner in the year 2003. During their services and after about 25 years, a communication emerges from the Assistant Engineer communicating to the Executive Engineer that the first petitioner should be regularized as he fit into the criteria *qua* qualifications and posts being sanctioned and vacant at the time when he was appointed, the same goes with the second petitioner.

4. Notwithstanding this communication/recommendation, the petitioners appear to have been brought under the ambit of the Karnataka Daily Wage Employees Welfare Act, 2012 ('the Act' for short). When the services of the petitioners were not regularized for a long time, despite representations which were said to have been given, they knocked at the doors of the 4th respondent / Assistant Executive Engineer, Panchayat Raj Engineering Division, Ankola, where they were then working, with one more representation. On 02-01-2024, the 4th respondent has also recommended the cases of the petitioners observing that they have rendered close to 30 years of service and their services have to be regularized. No order is passed on

the afore-quoted communication or recommendation. Therefore, the petitioners are at the doors of this Court seeking a direction by issuance of writ in the nature of *mandamus*, as aforementioned.

5. The learned counsel for the petitioners would reiterate the averments made in the petition, all of which are narrated hereinabove. As the petitioners admittedly have completed more than 30 years of service in the respective cadres in which they are serving for these long years, would seek a direction for regularizing their services. He would seek to place reliance upon several judgments of the Apex Court, all of which would bear consideration *qua* their relevance in the course of the order.

6. The learned High Court Government Pleader appearing for respondents 1, 2 and 4 would vehemently refute the submissions, contending that her submissions may be taken as objections to the petition. She would contend that merely because the petitioners are working from a long time as daily wagers, it cannot be said that they are entitled for regularization of their services. They have been brought under the Act which is equally beneficial. The petitioners cannot claim regularization as

a matter of right, but would not dispute the fact that the petitioners were initially appointed against sanctioned vacant posts.

7. The learned counsel representing the 3rd respondent / Karwar Zilla Panchayat would also accept the fact that the petitioners have been working for more than 30 years, as on today and were initially appointed against sanctioned vacant posts. He would submit that recommendation has been sent not once, but twice from the 4th respondent to the 3rd respondent, which have all been forwarded to the State Government. But, so far, no orders are received in this regard.

8. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

9. The afore-narrated facts are not in dispute. The link in the chain of events and the dates obtaining in the case at hand require reiteration. The 1st petitioner was appointed as Literate Assistant on 12-08-1986 in the Department of Rural Development and Panchayat Raj to work in the office of the Executive Engineer, Panchayat Raj Engineering Division, Karwar,

but later posted to Ankola. He was appointed against a sanctioned vacant post. This is discernible from the confirmation letter dated 16-03-1987 issued by the Assistant Executive Engineer, Ankola, 4th respondent herein. It reads as follows:

"ನಂ.ಲೋ.ಇಂ.ಲ.ಉ.ವಿ. 86-87/1786

ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ
ಅಭಿಯಂತರರು
ಉಪ-ವಿಭಾಗ, ಅಂಕೋಲಾ ರವರ ಕಛೇರಿ
ದಿನಾಂಕ: 16/03/1987

ದೃಢೀಕರಣ ಪತ್ರ

ಈ ಮೂಲಕ ದೃಢೀಕರಿಸುವುದೇನೆಂದರೆ, ಶ್ರೀ. ಆನಂದ ಆರ್. ಗಾವಕರ, ಅಕ್ಷರಸ್ಥ ಸಹಾಯಕ ಇವರು ಈ ಉಪ-ವಿಭಾಗದಲ್ಲಿ 12-8-1985 ರಂದು ಮಂಜೂರಾತಿ ಕೆಲಸ ನಿರೀಕ್ಷಕ ಹುದ್ದೆಯಲ್ಲಿ ಹಾಜರಾಗಿದ್ದು ಆ ಅವಧಿಯಲ್ಲಿ 7 ಹುದ್ದೆ ಮಂಜೂರಾತಿ ಇದ್ದು 6 ಜನ ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಿದ್ದರು. ಖಾಲಿ ಇದ್ದ ಒಂದು ಹುದ್ದೆಯಲ್ಲಿ ಹಾಜರಾಗಿರುತ್ತಾರೆಂದು ಈ ಮೂಲಕ ದೃಢೀಕರಿಸಿದೆ.

ಸಹಿ/-
ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ
ಅಭಿಯಂತರರು
ಉಪವಿಭಾಗ ಅಂಕೋಲಾ

ಪ್ರತಿಯನ್ನು: ಶ್ರೀ. ಆನಂದ ಆರ್. ಗಾವಕರ ನಿರೀಕ್ಷಕರು ಇವರಿಗೆ ಇವರ ಕೋರಿಕೆಯ ಮೇಲೆ ನೀಡಿದೆ."

(Emphasis added)

The afore-quoted letter is indicative of the fact that there were 7 sanctioned posts of Literate Assistants in the 3rd respondent - Office in which, six posts were filled up and incumbents are functioning. Against the seventh sanctioned vacant post, the 1st

petitioner is appointed, but on daily wages. The 2nd petitioner, likewise was appointed as a Junior Engineer in the 2nd respondent - Panchayat Raj Engineering Division, Karwar on 06.09.1993 against a sanctioned vacant post. Thus, the petitioners had already completed 10 years of service, in the years 1996 and 2003 respectively. The government by its communication dated 26/28-09-2011 addressing to all Zilla Panchayats directed identification of those persons who were working continuously for 10 years against sanctioned vacant posts as on the date of the judgment of the Apex Court in the case of **SECRETARY, STATE OF KARNATAKA VS. UMADEVI (3)**¹, which was rendered on **10.04.2006** and to consider the services of the employees for regularization. The communication dated 26/28-09-2011 reads as follows:

“ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: ಗ್ರಾ.ಅ.ಪ 43 ಜಿ.ಪ.ಅ 2009

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,

ಬಹುಮಹಡಿ ಕಟ್ಟಡ,

ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 26/28-09-2011

ಇಂದ,

ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ,

ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂ.ರಾಜ್ ಇಲಾಖೆ,

ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ,

ಬೆಂಗಳೂರು.

¹ (2006) 4 SCC 1

ಇವರಿಗೆ,

ಎಲ್ಲಾ ಜಿಲ್ಲಾ ಪಂಚಾಯತ್‌ಗಳ
ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಧಿಕಾರಿಗಳಿಗೆ,

ಮಾನ್ಯರೇ,

ವಿಷಯ :- ದಿನಗೂಲಿ ನೌಕರರ ಸೇವಾ ಸಕ್ರಮಾತಿ ಬಗ್ಗೆ,

ಉಲ್ಲೇಖ:- ಸರ್ಕಾರದ ಸಿಬ್ಬಂದಿ ಮತ್ತು ಆಡಳಿತ ಸುಧಾರಣೆ ಇಲಾಖೆ (ಸೇವಾ
ನಿಯಮಗಳು) ಯ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ: ಸಿ.ಆಸುಇ/25/ ಸೇಸಅ/2003
(ಭಾ) ದಿನಾಂಕ:13.11.2006.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ದಿನಗೂಲಿ ನೌಕರರ ಸೇವಾ ಸಕ್ರಮಾತಿ ಕುರಿತು ಶ್ರೀಮತಿ, ಉಮಾದೇವಿ ಪ್ರಕರಣದಲ್ಲಿ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಸಂವಿಧಾನ ಪೀಠವು ದಿನಾಂಕ: 10-04-2006 ರಂದು ನೀಡಿದ್ದ ತೀರ್ಪನ್ನು ಆಧರಿಸಿ ಸರ್ಕಾರದ ಸಿಬ್ಬಂದಿ ಮತ್ತು ಆಡಳಿತ ಸುಧಾರಣೆ ಇಲಾಖೆ (ಸೇವಾ-ನಿಯಮಗಳು) ಯು ದಿನಾಂಕ: 13-11-2006. ರಂದು ಸುತ್ತೋಲೆ ಹೊರಿಸಿರುತ್ತದೆ. ಸದರಿ ಸುತ್ತೋಲೆಯಲ್ಲಿ ಈ ಕೆಳಕಂಡ ನಾಲ್ಕು ಷರತ್ತುಗಳನ್ನು ಪೂರೈಸಿದ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಾತಿಗೊಳಿಸಲು ಅವಕಾಶವಿರುತ್ತದೆ ಎಂದು ತಿಳಿಸಲಾಗಿದೆ. ಅದರಂತೆ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವಾ ಸಕ್ರಮಾತಿ ವಿಷಯದಲ್ಲಿ ನೇಮಕಾತಿ ಪ್ರಾಧಿಕಾರ/ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು ಸಂಬಂಧಪಟ್ಟ ಜಿಲ್ಲಾ ಪಂಚಾಯತಿಗಳ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಧಿಕಾರಿಗಳು ಆಗಿರುವುದರಿಂದ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವಾ ಸಕ್ರಮಾತಿ ವಿಷಯದಲ್ಲಿ ಅರ್ಜಿದಾರರು ಸಲ್ಲಿಸುವ ಮನವಿ/ದಾಖಲೆಗಳನ್ನು ಜಿಲ್ಲಾ ಪಂಚಾಯತ್ ಹಂತದಲ್ಲಿಯೇ ನಿಯಮಾನುಸಾರ ಪರಿಶೀಲಿಸಿ ಸೂಕ್ತ ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕೆಂದು ಸೂಚಿಸಲಾಗಿದೆ:-

- 1) ಅಂತಹ ನೌಕರರನ್ನು ಮೂಲಕತಃ ಮಂಜೂರಾದ ಖಾಲಿ ಹುದ್ದೆಯಲ್ಲಿ ನೇಮಕ ಮಾಡಿರಬೇಕು.
- 2) ಹೀಗೆ ಅವರನ್ನು ನೇಮಕ ಮಾಡುವಾಗ ಅವರು ಸಂಬಂಧಿತ ಹುದ್ದೆಗೆ ನಿಗದಿಪಡಿಸಿರುವ ವಿದ್ಯಾರ್ಹತೆಯನ್ನು ಹೊಂದಿರಬೇಕು.
- 3) ಹೀಗೆ ನೇಮಕಗೊಂಡಂತಹ ನೌಕರರು 10 ವರ್ಷಗಳಿಗೂ ಹೆಚ್ಚಿನ ಅವಧಿಗೆ ಸತತವಾಗಿ ಅದೇ ಹುದ್ದೆಯಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸಿರಬೇಕು.
- 4) ನ್ಯಾಯಾಲಯಗಳ ಅಥವಾ ನ್ಯಾಯ ಮಂಡಳಿಗಳ ಆದೇಶಕ್ಕೊಳಪಟ್ಟು 10 ವರ್ಷಗಳಿಗೂ ಹೆಚ್ಚಿನ ಅವಧಿಗೆ ಅವರನ್ನು ಮುಂದುವರಿಸಿರಬಾರದು.

ಮುಂದುವರೆದು ದಿನಗೂಲಿ ನೌಕರರ ಸೇವಾ ಸಕ್ರಮಾತಿ ವಿಷಯದ ಬಗ್ಗೆ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಧಿಕಾರಿಗಳು ಪದೇ ಪದೇ ಸರ್ಕಾರಕ್ಕೆ ಪ್ರಸ್ತಾವನೆ ಸಲ್ಲಿಸುವುದರ ಮೂಲಕ ಸರ್ಕಾರಕ್ಕೆ ಮುಜುಗರ ಉಂಟು ಮಾಡಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ಇನ್ನು ಮುಂದೆ ದಿನಗೂಲಿ ನೌಕರರ ಸೇವಾ ಸಕ್ರಮಾತಿ ವಿಷಯದ ಬಗ್ಗೆ ಪ್ರಸ್ತಾವನೆಯನ್ನು ಸರ್ಕಾರಕ್ಕೆ ಸಲ್ಲಿಸಬಾರದೆಂದು ಹಾಗೂ ಜಿಲ್ಲಾ

ಪಂಚಾಯತ್ ಹಂತದಲ್ಲಿಯೇ ಪರಿಶೀಲಿಸಿ ಸೂಕ್ತ ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕೆಂದು ಕಟ್ಟುನಿಟ್ಟಾಗಿ ಈ ಮೂಲಕ ತಿಳಿಸಲಾಗಿದೆ. ಹಾಗೂ ಒಂದು ವೇಳೆ ಮುಂದೆ ಇಂತಹ ಪ್ರಸ್ತಾವನೆಗಳು ಸರ್ಕಾರಕ್ಕೆ ಸಲ್ಲಿಸಿದಲ್ಲಿ ಗಂಭೀರವಾಗಿ ಪರಿಗಣಿಸಿ, ಸಂಬಂಧಪಟ್ಟ ಅಧಿಕಾರಿ/ನೌಕರರ ವಿರುದ್ಧ ಶಿಸ್ತು ಕ್ರಮ ಕೈಗೊಳ್ಳಲಾಗುವುದೆಂದು ಸಹ ತಿಳಿಸಲು ನಿರ್ದೇಶಿತನಾಗಿದ್ದೇನೆ.

ತಮ್ಮ ನಂಬುಗೆಯ,

ಸಹಿ/-

28.09.2011

(ಎನ್.ವೈ. ನಾಗರ)

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ(ಸೇವೆಗಳು-ಎ).

ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್

ಇಲಾಖೆ."

(Emphasis added)

The petitioners would undoubtedly come within the ambit of what was observed in the communication. The 4th respondent – Assistant Executive Engineer, again based upon the government order, recommends cases of both the petitioners enclosing certificate of work. The communication dated 26.03.2014 reads as follows:

"Office of the Assistant Executive Engineer, Panchayat Raj Engineering Sub-Division Ankola. (UK)-581314	ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರ ಕಛೇರಿ ಪಂಚಾಯತ್ ರಾಜ್ ಇಂಜಿನಿಯರಿಂಗ್ ಉಪ ವಿಭಾಗ ಅಂಕೋಲಾ, (ಉ.ಕ) – 581314
ದೂರವಾಣಿ : 08388 – 230205	E-mail: preankola@gmail.com
ನಂ.ಪಂ.ರಾ.ಇಂ.ಉ.ವಿ.ಅಂಕೋಲಾ/ದಿನಗೂಲಿ ಸಿಬ್ಬಂದಿ 2013-14/2046	26.03.2014
" ಕಾಡು " ಬೆಳೆಸಿ " ನಾಡು " ಉಳಿಸಿ	

ರಿಗೆ,

ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು,

ಪಂಚಾಯತ್ ರಾಜ್ ಇಂಜಿನಿಯರಿಂಗ್ ವಿಭಾಗ,

ಕಾರವಾರ, (ಉ.ಕ.)
ಮಾನ್ಯರೇ,

ವಿಷಯ: ಶ್ರೀ ಆನಂದ್ ಆರ್.ಗಾಂವಕರ್ ದಿನಗೂಲಿ ಕೆಲಸ ನಿರೀಕ್ಷಕ ಇವರ
ಸೇವೆ ಖಾಯಂಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ:- ಶ್ರೀ ಆನಂದ್ ಆರ್.ಗಾಂವಕರ್ ದಿನಗೂಲಿ ಕೆಲಸ ನಿರೀಕ್ಷಕ ಇವರ
ಅರ್ಜಿ ದಿನಾಂಕ: 05-09-2013.

ಮೇಲ್ಕಾಣಿಸಿದ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಉಲ್ಲೇಖಿತ ಪತ್ರದಲ್ಲಿ ಶ್ರೀ ಆನಂದ್ ಆರ್.ಗಾಂವಕರ್ ರವರು ದಿನಗೂಲಿ ಕೆಲಸ ನಿರೀಕ್ಷಕ ಇವರು ತಮ್ಮ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸುವ ಕುರಿತು ವಿನಂತಿಸಿಕೊಂಡಂತೆ ಅವರು ಈ ಕಛೇರಿಯಲ್ಲಿ ದಿನಾಂಕ: 12-08-1986 ದಿಂದ ದಿನಗೂಲಿ ಕೆಲಸ ನಿರೀಕ್ಷಕರಾಗಿ ಕಛೇರಿ ಖಾಲಿ ಹುದ್ದೆಯಲ್ಲಿ ಸೇವೆ ಸಲ್ಲಿಸುತ್ತಿದ್ದಾರೆ. ಇವರು ದಿನಾಂಕ: 13-11-2006 ರ ಸರಕಾರದ ಸುತ್ತೋಲೆಯಲ್ಲಿ ಸೂಚಿಸಿದ 4 ಶರತ್ತುಗಳು ಸುಪ್ರಿಂ ಕೋರ್ಟ್ ನಿರ್ದೇಶನದ ಪ್ರಕಾರ ತೃಪ್ತಿಕರವಾಗಿದ್ದು, ಇದ್ದುದರಿಂದ ಅವರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಲು ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ವಿನಂತಿಸಿದೆ. ಹಾಗೂ ಅವರ ಸೇವೆಯು ತೃಪ್ತಿಕರವಾಗಿದೆ ಎಂದು ಈ ಮೂಲಕ ದೃಢೀಕರಿಸಿದೆ.

- ಅಡಕ : 1) ಸೇವೆಯ ಧೃಡೀಕೃತ ನಕಲು ಪ್ರತಿ : 1 ತಮ್ಮ ವಿಶ್ವಾಸಿ
2) ಎಸ್.ಎಸ್.ಎಲ್.ಸಿ. ಅಂಕಪಟ್ಟಿ ನಕಲು ಪ್ರತಿ: 1 ಸಹಿ/-
3) ಕಛೇರಿಯ ಆದೇಶದ ಪ್ರತಿ: 1 ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ
ಅಭಿಯಂತರರು
4) ನಗದು ಪುಸ್ತಕ ಧೃಡೀಕೃತ ಪ್ರತಿ: 1 ಪಂ.ರಾಜ್.ಇಂ.ಉಪ-ವಿಭಾಗ
ಅಂಕೋಲಾ.
5) ಪ್ರಮಾಣ ಪತ್ರ: 1”

The certificate of service of the second petitioner reads as follows:

“ಅ.ಕ್ರ.ನಂ.ಪ.ರಾ.ಇ.ಕುಮಟಾ:ದಿ.ನೇ:2011-12/1124
ಅಭಿಯಂತರರು

ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ

ಪಂಚಾಯತರಾಜ್ ಇಂಜಿನಿಯರಿಂಗ್ ಉಪವಿಭಾಗ
ಕುಮಟಾ ಇವರ ಕಛೇರಿ 31-3-2012

ಸೇವಾ ಪ್ರಮಾಣ ಪತ್ರ

ಶ್ರೀ ಈಶ್ವರ ಯು. ನಾಯ್ಕ ತಾಂತ್ರಿಕ ಡಿಪ್ಲೋಮದಾರ ಇವರು ಈ ಉಪವಿಭಾಗದಲ್ಲಿ ದಿನಾಂಕ: 06/09/1993 ರಂದು ದಿನಗೂಲಿ ಆಧಾರದ ಮೇಲೆ ನೇಮಕಗೊಂಡಿದ್ದು ಉಪ ವಿಭಾಗದಲ್ಲಿ ಮಂಜೂರಿಯಾಗಿದ್ದು ನಾಲಿ ಇರುವ ಕಿರಿಯ ಇಂಜಿನಿಯರ ಹುದ್ದೆಯಲ್ಲಿ ಹೊಂದಿಕೊಂಡು ಸತತವಾಗಿ ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಿದ್ದಾರೆ.

ಸಹಿ/-

ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು
ಪಂಚಾಯತರಾಜ್ ಇಂಜಿನೀಯರಿಂಗ್ ಉಪವಿಭಾಗ
ಕುಮಟಾ(ಉ.ಕೆ)

ಪ್ರತಿ ಶ್ರೀ ಈಶ್ವರ ಯು. ನಾಯ್ಕ ತಾಂತ್ರಿಕ ಡಿಪ್ಲೋಮಾದಾರ ಇವರಿಗೆ ನಿಮ್ಮ ಪತ್ರ
ದಿನಾಂಕ : 31/03/2012 ರಂತೆ ನೀಡಲಾಗಿದೆ.”

(Emphasis added)

It appears that recommendations so made resulted in bringing these petitioners, without they being made aware of, under the Act. The petitioners then represent to the 4th respondent that they cannot be brought under the Act but will have to be considered for regularizing their services as they have completed requisite number of years of services and had fulfilled all the conditions of the Government as per the communication quoted *supra*. This representation again results in recommendation on 02-01-2024. It reads as follows:

“ಇವರಿಗೆ,
ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು,
ಪಂಚಾಯತ ರಾಜ್ ಇಂಜಿನೀಯರಿಂಗ್
ವಿಭಾಗ, ಕಾರವಾರ,

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಈ ಕಛೇರಿಯಲ್ಲಿ ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಿರುವ ಕ್ಷೇಮಾಭಿವೃದ್ಧಿ ನೌಕರರ
ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸುವ ಕುರಿತು.

ಉಲ್ಲೇಖ:- 1) ರೇಷ್ಮೆ ಕೃಷಿ ಅಭಿವೃದ್ಧಿ ಆಯುಕ್ತರು ಹಾಗೂ ನಿರ್ದೇಶಕರು
ಬೆಂಗಳೂರು ರವರ ಆದೇಶ ಸಂಖ್ಯೆ:
ಸಿ2:ದಿ.ಗೂ.ನೌ.ಸೇ.ಸ:75:2005-06 ದಿನಾಂಕ: 23-08-2023.

2) ಸರ್ಕಾರಿ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ : ಗ್ರಾ ಅಪ 65 ಜಿಪ, ಬೆಂಗಳೂರು
ದಿನಾಂಕ: 08-05-2014.

3) ಕ್ಷೇಮಾಭಿವೃದ್ಧಿ ನೌಕರರ ಮನವಿ ಪತ್ರ

ಈ ಮೇಲಿನ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಈ ಕಛೇರಿಯಲ್ಲಿ ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಿರುವ ಕ್ಷೇಮಾಭಿವೃದ್ಧಿ ನೌಕರರಾದ ಶ್ರೀ. ಈಶ್ವರ ಯು. ನಾಯ್ಕ ಮತ್ತು ಶ್ರೀ. ಆನಂದ ಆರ್. ಗಾಂವಕರ್ ಇವರ 'ಸಿ' ವೃಂದದಲ್ಲಿ ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಿದ್ದು, ಮೇಲಿನ ಉಲ್ಲೇಖ (2)ರ ಪತ್ರದಂತೆ ಸದರ ನೌಕರರನ್ನು ಕರ್ನಾಟಕ ದಿನಗೂಲಿ ಕ್ಷೇಮಾಭಿವೃದ್ಧಿ ನೌಕರರಾಗಿ ಪರಿಗಣಿಸಿ ಆದೇಶಿಸಿದ್ದು ಇರುತ್ತದೆ. ಉಲ್ಲೇಖ (1) ರ ಸರ್ಕಾರಿ ಆದೇಶದಂತೆ ರೇಷ್ಮೆ ಕೃಷಿ ಅಭಿವೃದ್ಧಿ ಆಯುಕ್ತರು ಹಾಗೂ ನಿರ್ದೇಶಕರು ಬೆಂಗಳೂರು ದಿನಾಂಕ: 01-07-1984 ನಂತರ ನೇಮಕಗೊಂಡಿರುವ ನೌಕರರನ್ನು ಮಂಜೂರಾದ ಖಾಲಿ ಹುದ್ದೆಯಲ್ಲಿ ಅಥವಾ ಸೂಪರನ್ಯೂಮರೆರಿ ಹುದ್ದೆಯಲ್ಲಿ ಸೃಜಿಸಿ ಸರ್ಕಾರಕ್ಕೆ ಪ್ರಸ್ತಾವನೆ ಸಲ್ಲಿಸಿರುವ ಪ್ರಯುಕ್ತ ರೇಷ್ಮೆ ಇಲಾಖೆಯ ನೌಕರರನ್ನು ಗ್ರೂಪ್ ಸಿ ಮತ್ತು ಡಿ ಗ್ರೂಪ್‌ಗಳಲ್ಲಿ ನೇಮಕ ಮಾಡಿ ಆದೇಶಿಸಲಾಗಿದೆ. ಆಕಾರಣ ಈ ಕಛೇರಿಯ ಈ ಕೆಳಕಂಡ ನೌಕರರನ್ನು ಅವರು 10 ವರ್ಷ ಪೂರ್ಣಗೊಳಿಸಿದ ನಂತರ ಈವರನ್ನೂ ಸಹ ಖಾಲಿ ಹುದ್ದೆಯಲ್ಲಿ ಅಥವಾ ಸೂಪರನ್ಯೂಮರೆರಿ ಹುದ್ದೆಯಲ್ಲಿ ನೇಮಕ ಮಾಡಲು ತಮ್ಮ ಮನವಿ ಪತ್ರದಲ್ಲಿ ಕೋರಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಸದರಿಯವರ ಕೋರಿಕೆಯ ಮೇರೆಗೆ ಈ ಪ್ರಸ್ತಾವನೆಯನ್ನು ಸಲ್ಲಿಸಿದೆ.

ಕ್ರ.ಸಂ.	ನೌಕರರ ಹೆಸರು	ಹುದ್ದೆ	ಕೆಲಸಕ್ಕೆ ಸೇರಿದ ದಿನಾಂಕ	ದಿನಗೂಲಿಯಲ್ಲಿ 10 ವರ್ಷ ಪೂರ್ಣಗೊಳಿಸಿದ ದಿನಾಂಕ
1	ಶ್ರೀ. ಈಶ್ವರ ಯು. ನಾಯ್ಕ	ಕಿರಿಯ ಇಂಜಿನೀಯರ್	06-09-1993	05-09-2003
2	ಶ್ರೀ. ಆನಂದ ಆರ್. 'ಗಾಂವಕರ್'	ಅಕ್ಷರಸ್ಥ ಸಹಾಯಕ	12/08/1986	11-08-1986

ತಮ್ಮ ವಿಶ್ವಾಸಿ

ಸಹಿ/-

ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ

ಅಭಿಯಂತರರು,

ಪಂ.ರಾ.ಇಂ. ಉಪ ವಿಭಾಗ, ಅಂಕೋಲಾ."

No order is passed on the said recommendation/communication between the quarters of the respondents. The petitioners are

now before this Court seeking a direction to regularize their services and extending all service benefits.

10. What is to be noticed is, as on today, **the 1st petitioner has put in 39 years of service in a sanctioned vacant post. He is now 58 years. The 2nd petitioner has put in 32 years of service in a sanctioned vacant post. He is now 54 years.** In their prime youth, they have toiled without knowing their future, as they were daily wage employees then, and daily wage employees even today. The only difference is that, they are brought under the Act. Whether that would suffice or a direction is to be issued for their regularization is what is required to be considered.

11. The petitioners fulfill quad conditions that were enunciated, in the judgment of the Apex Court, in the case of **UMADEVI (3)** *supra*. The Apex Court in the case of **UMADEVI (3)** has held as follows:

“... ..”

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The

new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

.....

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 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 the courts or of tribunals. The question of regularisation 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 aboveresferred 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 regularise 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 the 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 wagers 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 sub judice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

(Emphasis supplied)

Pursuant to the judgment of the Apex Court, a government order comes about on 13-11-2006 which directed consideration of those cases for regularization in the event they would fulfill the four conditions. Those four conditions are quoted *supra*. **The petitioners fulfill all the four conditions. The first condition is that they should be appointed against a sanctioned vacant post; they are. The second is that they should fulfill the qualifications for the posts; they do. The third condition is that they should have completed 10 years of service as on the date of judgment of the Apex Court in the case of UMADEVI (3) *supra* which was rendered on 10.04.2006. Both the petitioners had**

completed 10 years of service by 10.04.2006 itself. In fact, the 1st petitioner had completed close to 20 years of service by then and the 2nd petitioner, 13 years by 01.04.2006 itself. Therefore, they fulfill that condition as well. The 4th condition is that, their continuance should not be litigious which would mean that they should not be continued on the strength of any interim order. The petitioners fulfill every condition. It is understandable as to how the State would bring these petitioners under the Act, rendering a temporary solace, when they had a right to be regularized, in terms of the judgment of the Apex Court, in the case of **UMADEVI (3) supra**.

12. The State projects that the judgment of the Apex Court in the case of **UMADEVI (3) supra**, in all such cases and relies on the same judgment to become an impediment for consideration of the cases of the petitioners for regularization. The projection on the face of it being untenable, is noted only to be rejected.

13. It thus becomes, germane to consider the judgments rendered by the Apex Court in the aftermath of the judgment rendered by the Apex Court in the case of **UMADEVI (3) supra**.

The judgment of the Apex Court in the case of **UMADEVI (3)** *supra* is quoted hereinabove. The directions are also found in the paragraphs that are quoted. Much water has flown after the judgment of the Apex Court in the case of **UMADEVI (3)**.

14. As observed hereinabove, the Apex Court rendered its judgment in the case of **UMADEVI (3)** on 10-04-2006. Relevant paragraphs are already quoted hereinabove. Subsequent to the judgment of the Apex Court in the case of **UMADEVI (3)**, considering the case of **UMADEVI (3)**, the Apex Court in several judgments held and affirmed the right of several employees for regularization under several circumstances. The Apex Court in the case of **NARENDRA KUMAR TIWARI v. STATE OF JHARKHAND**², holds as follows:

"7. The purpose and intent of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the

² (2018) 8 SCC 238

employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753] and Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15-11-2000 and the cut-off date was fixed as 10-4-2006. **In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.**

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise - the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. **If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.**

11. The impugned judgment and order [Anil Kumar Sinha v. State of Jharkhand, 2016 SCC OnLine Jhar 2904] passed by the High Court is set aside in view of our conclusions. The State should take a decision within four

months from today on regularisation of the status of the appellants. The appeals are accordingly disposed of.”

(Emphasis supplied)

15. Later, the Apex Court in the case of **SHEO NARAIN**

NAGAR v. STATE OF U.P.³, holds as follows:

“6. The learned counsel appearing on behalf of the respondent has relied upon para 44 of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], so as to contend that it was not the case of irregular appointment but of illegal appointment; there was no post available on which the services of the appellants could have been regularised and appointment were in contravention of the reservation policy also; thus, termination order was rightly issued and, in no case, the appellants were entitled for regularisation of their services.

7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. This situation was not envisaged by Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi (3) [State of Karnataka v. Umadevi(3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has been ignored and conveniently overlooked

³ (2018) 13 SCC 432

by various State Governments/authorities. We regretfully make the observation that Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has not been implemented in its true spirit and has not been followed in its pith and substance. **It is being used only as a tool for not regularising the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : AIR 1983 SC 130], from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. Thus, the time has come to stop the situation where Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006.** The employment cannot be on exploitative terms, whereas Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753].

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider

the regularisation of the appellants. However, regularisation was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2-10-2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by the learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

9. The High Court dismissed the writ application relying on the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753]. **But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2-10-2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect from 2-10-2002, we direct that the services of the appellants be regularised from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today."**

(Emphasis supplied)

16. The Apex Court in the case of **CHANDER MOHAN**

NEGI v. STATE OF H.P.⁴, holds as follows:

"11. At the outset, it is to be noted that the schemes in question were notified in the years 2001 and 2003 under which appointments were made with regard to Primary Assistant Teachers and Teachers in other categories. At the relevant point of time, nobody has questioned either the schemes or the appointments. It is the specific case of the respondent State that such appointments have not affected the writ petitioners and the Department was not in a position to leave the schools, Teachers deficient for long since it would have affected the studies of the students very badly. Therefore, it was the case of the State that Teachers had been appointed under various schemes at that point of time and such appointments have been made up to the year 2007 and have no impact on the appellants since they have completed their two-year JBT training in the year 2011. As is evident from the order [Pankaj Kumar v. State of H.P., 2014 SCC OnLine HP 5944] under appeal passed by the Division Bench of the High Court, the appellant-writ petitioners have not even chosen to file rejoinder and the stand taken by the State thus has remained uncontroverted. Further, it is also to be noted that when such appointments were made during the years 2001 and 2003 the writ petitions came to be filed in the years 2012 and 2013. As the writ petitioners have claimed interest for their appointment, the Division Bench of the High Court has rightly held [Pankaj Kumar v. State of H.P., 2014 SCC OnLine HP 5944] that such petitions cannot be considered as the public interest litigation. Such a writ petition which was filed by the petitioners who came to be qualified only in the year 2011 are not entitled for any relief on the ground of unexplained laches and inordinate delay of about more than 10 years in approaching the court for questioning the appointments. Though relief was sought against the State to deny the benefit of regularisation to the appointed Teachers, they were not even impleaded as party respondents. An association was impleaded as third respondent but without furnishing any material to show that at least majority of appointees are members of such association. So far as Primary Assistant Teachers Scheme of 2003, which was the subject-matter of letters patent appeal arising out of CWP No. 3303 of 2012-A filed by Chander

⁴ (2020) 5 SCC 732

Mohan Negi and others, is concerned, the appellants in Civil Appeal No. 2813 of 2017 except Appellants 1, 2 and 4 have withdrawn [Chander Mohan Negi v. State of H.P., 2020 SCC OnLine SC 459] the appeal and Appellants 1 and 4 are already appointed as JBTs. Insofar as the only appellant viz. Appellant 2, Rajiv Chauhan is concerned, it is stated that he is qualified and there are vacant posts and he can be considered if he applies to any of the existing vacancies. So far as the Primary Assistant Teacher Scheme is concerned, same was notified as early as on 27-8-2003. As is evident from the Scheme itself, the object of the Scheme appears to be to compulsorily enrol children in schools for elementary and primary education in the remote areas to achieve the goals as set by the Government while enacting the Himachal Pradesh Compulsory Primary Education Act, 1997 with a view to achieve the target of 100% enrolment to children. As per the Scheme, the eligibility was 10+2 from a recognised Board/University and the candidates with higher qualifications were also eligible and candidates with professional qualifications were to be preferred. As per the regular Recruitment Rules the requisite qualification for the post of JBT Teacher during the relevant time was 10+2 with 50% marks and JBT certificate. As submitted by the learned Senior Counsel appearing for the State that initially though 3500 odd Teachers were appointed, as of now there are only a total of 3294 Teachers working in this category and out of this about 1866 had the qualification of 10+2 with more than 50% marks at the relevant point of engagement. Out of the balance, 1015 had 10+2 with less than 50% marks, but they had higher qualification such as BA/MA/M Sc or B Ed, etc. Further, it is also brought to our notice that out of all the candidates, 3294 candidates who are presently working have acquired the professional qualification of diploma in elementary education or have undergone Professional Development Programme for Elementary Teachers. In that view of the matter, we are of the view that when the appointees appointed under the scheme have completed more than almost 15 years of service now and also have acquired the professional qualifications, they cannot be denied regularisation at this point of time. As the appointments were made as per the schemes notified by the Government such appointments cannot be treated as illegal, if at all they can be considered irregular. When it is the plea of the State that in view of the hard topography/tribal areas in the State, large number of vacancies were there even in single teacher schools and to achieve the object of the

Himachal Pradesh Primary Education Act, 1997 such steps were taken, there is no reason to disbelieve the same, more so, in absence of any affidavit by way of rejoinder by the writ petitioners before the High Court controverting the allegations in the reply filed on behalf of the State.

12. Even with regard to the Para Teachers Policy under which various category of Teachers were appointed in the year 2003 pursuant to policy notified on 17-9-2003 it is clear from the record placed before this Court that all the persons who were recruited as Para Teachers were fully qualified as per the Recruitment and Promotion Rules i.e. the Himachal Pradesh Education Department Class III (School and Inspection Cadre) Service Rules, 1973. In view of the stand of the State that such policy was necessitated due to large number of vacant posts which have arisen year after year and which could not be filled since the State Selection Subordinate Board, Hamirpur, which was responsible for the selection of Teachers had come under a cloud and the selection process had come to a halt, such appointments cannot be rendered as illegal. Such aspect is also evident from the policy itself. Even in other category of the Grant-in-Aid to Parent Teacher Association Rules, all Teachers appointed under the Scheme fulfil the educational qualifications prescribed in the Rules. For such kind of Teachers, the Cabinet has taken decision to take over the Teachers on contract basis after completion of eight years of service which period was later reduced to seven years. It is also brought to our notice during the course of arguments that out of the total 6799 Teachers, 5017 Teachers were already taken over on contract basis by the State Government and only 1782 could not be taken over in view of the interim orders passed by this Court.

13. It is true that in the initial schemes notified by the Government, there was a condition that such appointees should not seek regularisation/ absorption but at the same time for no fault of them, they cannot be denied regularisation/absorption. It is in view of the requirement of the State, their services were extended from time to time and now all the appointees have completed more than 15 years of service. For majority of the appointed Teachers under the various schemes, benefit was already extended and some left over candidates were denied on account of interim orders passed by this Court. With regard to Primary

Assistant Teachers, it is stated that all the candidates have completed Special Teacher Training Qualifying Condensed Course and also had obtained special JBT certificate after 5 years' continuous service in terms of the Himachal Pradesh Education Code, 1985. The judgments relied on by learned counsel Shri Prashant Bhushan also would not render any assistance to the case of the appellants herein for the reason that there was unexplained and inordinate delay on the part of the appellants in approaching the High Court and further having regard to explanation offered by the State about the need of framing such policies to meet the immediate requirement to fill up single teacher schools which were vacant for a very long time, having regard to topographical conditions, which is not even controverted by way of any rejoinder before the High Court. In such view of the matter, taking the totality of peculiar circumstances of these cases, we are of the view that the view expressed by this Court in the judgments relied on cannot be applied to the facts of the case on hand. All the appointed candidates are working for the meagre salaries pursuant to schemes notified by the Government. Except the vague submission that such schemes were framed only to make backdoor entries, there is no material placed on record to buttress such submission. Further it is also to be noted that though such schemes were notified as early as in 2003, nobody has questioned such policies and appointments up to 2012 and 2013. The writ petition i.e. CWP No. 3303 of 2012-A was filed in the year 2012 without even impleading the appointees as party respondents. In the writ petition, there was no rejoinder filed by the writ petitioners disputing the averments of the State as stated in the reply-affidavit. Having regard to the nature of such appointments, appointments made as per policies cannot be termed as illegal. Having regard to material placed before this Court and having regard to reasons recorded in the impugned order [Pankaj Kumar v. State of H.P., 2014 SCC OnLine HP 5944] by the High Court, we are of the view that no case is made out to interfere with the impugned judgment [Pankaj Kumar v. State of H.P., 2014 SCC OnLine HP 5944] of the High Court."

(Emphasis supplied)

17. Earlier to the judgment rendered by the Apex Court in the afore-quoted judgment, the Apex Court in the case of **AMARENDRA KUMAR MOHAPATRA v. STATE OF ORISSA**⁵, had held as follows:

"42. The decision in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], as noticed earlier, permitted regularisation of regular appointments and not illegal appointments. Question, however, is whether the appointments in the instant case could be described as illegal and if they were not, whether the State could be directed to regularise the services of the degree-holder Junior Engineers who have worked as ad hoc Assistant Engineers for such a long period, not only on the analogy of the legislative enactment for regularisation but also on the principle underlying para 53 of the decision in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753].

43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka v. M.L. Kesari [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826], has examined that question and explained the principle regarding regularisation as enunciated in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. The decision in that case summed up the following three essentials for regularisation : (1) the employees have worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal, and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this

⁵ (2014) 4 SCC 583

stage: (M.L. Kesari case [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826], SCC p. 250)

"7. It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in a 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 person 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."

44. It is nobody's case that the degree-holder Junior Engineers were not qualified for appointment as Assistant Engineers as even they possess degrees from recognised institutions. It is also nobody's case that they were not appointed against the sanctioned post. There was some debate as to the actual number of vacancies available from time to time but we have no hesitation in holding that the appointments made were at all relevant points of time against sanctioned posts. The information provided by Mr. Nageswara Rao, learned Additional Solicitor General, appearing for the State of Orissa, in fact, suggests that the number of vacancies was at all points of time more than the number of appointments made on ad hoc basis. It is also clear that each one of the degree-holders has worked for more than 10 years ever since his appointment as ad hoc Assistant

Engineer. It is in that view difficult to describe these appointments of the Stipendiary Engineers on ad hoc basis to be illegal so as to fall beyond the purview of the scheme envisaged in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753].

45. The upshot of the above discussion is that not only because in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] this Court did not disturb the appointments already made or regularisation granted, but also because the decision itself permitted regularisation in case of irregular appointments, the legislative enactment granting such regularisation does not call for interference at this late stage when those appointed or regularised have already started retiring having served their respective departments, in some cases for as long as 22 years."

(Emphasis supplied)

18. A three Judges bench of the Apex Court considering the case of **UMADEVI (3)** *supra* and subsequent judgments, in the case of **PREM SINGH v. STATE OF U.P.**⁶, holds as follows:

"36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. **This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have**

⁶ (2019) 10 SCC 516

been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

37. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

(Emphasis supplied)

19. The Apex Court later, in the case of **JAGGO v. UNION OF INDIA**⁷ has held as follows:

"7. They urged the High Court to recognize their long and continuous service, the nature of their work, and the lack of any backdoor or illegal entry. They highlighted that they had functioned without any break, performed tasks equivalent to regular employees, and had been assigned duties essential to the regular upkeep, cleanliness, and maintenance of the respondent's offices. The High Court, after examining the Tribunal's decision and the submissions advanced, concluded that the petitioners before it were part-time workers who had not been appointed against sanctioned posts, nor had they performed a sufficient duration of full-time service to satisfy the criteria for regularization. It relied on the principle laid down in Secretary, State of Karnataka v. Uma Devi³ holding that the petitioners could not claim a vested right to be

⁷ 2024 SCC OnLine SC 3826

absorbed or regularized without fulfilling the requisite conditions. The High Court further observed that the petitioners did not possess the minimum educational qualifications ordinarily required for regular appointments, and additionally noted that the employer had subsequently outsourced the relevant housekeeping and maintenance activities. Concluding that there was no legal basis to grant the reliefs sought, the High Court dismissed the writ petition. Aggrieved by this rejection, the appellants have approached this Court by way of these appeals.

8. On behalf of the appellants, the following arguments have been advanced before us:

- (i). **Continuous and Substantive Engagement:** The appellants emphasize their long, uninterrupted service spanning well over a decade—and in some instances, exceeding two decades. They argue that their duties were neither sporadic nor project-based but permanent and integral to the daily functioning of the respondent's offices.
- (ii). **Nature of Duties:** Their responsibilities— such as cleaning, dusting, gardening, and other maintenance tasks—were not casual or peripheral. Instead, they were central to ensuring a clean, orderly, and functional work environment, effectively aligning with roles typically associated with regular posts.
- (iii). **Absence of Performance Issues:** Throughout their tenure, the appellants were never issued any warning or adverse remarks. They highlight that their work was consistently satisfactory, and there was no indication from the respondents that their performance was not satisfactory or required improvement.
- (iv). **Compliance with 'Uma Devi' Guidelines:** The appellants assert that their appointments were not “illegal” but at most “irregular.” Drawing on the principles laid down in *Secretary, State of Karnataka v. Uma Devi*⁴, they submit that long-serving employees in irregular appointments—who fulfil essential, sanctioned functions—are entitled to consideration for regularization.

- (v). **Discrimination in Regularization:** The appellants point out that individuals with fewer years of service or similar engagements have been regularized. They contend that denying them the same benefit, despite their longer service and crucial role, constitutes arbitrary and discriminatory treatment.
- (vi). **Irrelevance of Educational Qualifications:** The appellants reject the respondents' reliance on formal educational requirements, noting that such criteria were never enforced earlier and that the nature of their work does not inherently demand formal schooling. They argue that retrospectively imposing such qualifications is unjustified given their proven capability over many years.
- (vii). **Equity and Fairness:** Ultimately, the appellants submit that the High Court erred by focusing too rigidly on their initial terms of engagement and ignoring the substantive reality of their long, integral service. They maintain that fairness, equity, and established judicial principles call for their regularization rather than abrupt termination

9. On the other hand, the following primary arguments have been advanced before us on behalf of the Respondents:

- (i). **Nature of Engagement:** The respondents maintain that the appellants were engaged purely on a part-time, contractual basis, limited to a few hours a day, and that their work was never intended to be permanent or full-time.
- (ii). **Absence of Sanctioned Posts:** They assert that the appellants were not appointed against any sanctioned posts. According to the respondents, without sanctioned vacancies, there can be no question of regularization or absorption into the permanent workforce.
- (iii). **Non-Compliance with 'Uma Devi' Criteria:** Relying heavily on *Secretary, State of Karnataka v. Uma Devi* (supra), the respondents argue that the appellants do not meet the conditions necessary for regularization. They emphasize that merely serving a

long period on a part-time or ad-hoc basis does not create a right to be regularized.

- (iv). **Educational Qualifications:** The respondents contend that even if the appellants were to be considered for regular appointments, they do not possess the minimum educational qualifications mandated for regular recruitment. This, in their view, disqualifies the appellants from being absorbed into regular service.
- (v). **Outsourcing as a Legitimate Policy Decision:** The respondents point out that they have chosen to outsource the relevant housekeeping and maintenance work to a private agency. This, they argue, is a legitimate administrative policy decision aimed at improving efficiency and cannot be interfered with by the courts.
- (vi). **No Fundamental Right to Regularization:** Finally, the respondents underscore that no employee, merely by virtue of long-standing temporary or part-time engagement, acquires a vested right to be regularized. They maintain that the appellants' claims are devoid of any legal entitlement and that the High Court was correct in dismissing their petition.

10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping,

dusting, and cleaning of floors, workstations, and common areas—a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as “part-time workers,” the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

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.

14. xxx

15. xxx

16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and

their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

17. As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed—cleaning, sweeping, dusting, and gardening—does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades. Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

18. xxx

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

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 judgment of this Court in Vinod Kumar v. Union of India⁵, 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 judgment 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 judgment 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.

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 judgment 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.

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.

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.”

(Emphasis supplied)

Again, the Apex Court in the case of **SHRIPAL v. NAGAR NIGAM**⁸, has held as follows:

“**3.** The factual matrix leading up to the appeal before us is as follows:

3.1. The Appellant Workmen claim to have been engaged as Gardeners (Malis) in the Horticulture Department of the Respondent Employer, Ghaziabad Nagar Nigam, since the year 1998 (in some instances, since 1999). According to them, they continuously discharged horticultural and maintenance duties— such as planting trees, maintaining parks, and beautifying public spaces— under the direct supervision of the Respondent Employer. They further allege that no formal appointment letters were ever issued to them, and that they were persistently denied minimum wages, weekly offs, national holidays, and other statutory benefits.

3.2. In 2004, the Appellant Workmen, along with many other similarly situated employees, raised an industrial dispute (C.B. Case No. 6 of 2004) before the Conciliation Officer at Ghaziabad, seeking regularization of their services and the requisite statutory benefits. They contend that, upon learning of this demand, the Respondent Employer began delaying their salaries and subjected them to adverse working conditions. Eventually, around mid-July 2005, the services of numerous workmen were allegedly terminated orally, without any notice, written orders, or retrenchment compensation.

3.3. Since the above termination took place during the pendency of the conciliation proceedings, the Appellant Workmen argue it violated Section 6E of the U.P. Industrial Disputes Act, 1947. Consequently, the State Government referred the disputes concerning both (i) regularization and

⁸ 2025 SCC OnLine SC 221

(ii) legality of the alleged termination, to the Labour Court, Ghaziabad for adjudication.

3.4. The Labour Court proceeded to decide the references vide two orders:

- (i) Order dated 03.06.2011 : In numerous adjudication cases (e.g., Adjudication Case Nos. 448, 451, 467 of 2006, etc.), the Labour Court passed awards holding the terminations illegal for want of compliance with Section 6N of the U.P. Industrial Disputes Act, 1947, and directed reinstatement with 30% back wages.
- (ii) Order dated 11.10.2011 : However, in about 41 other adjudication cases (e.g., Adjudication Case Nos. 269, 270, 272, etc.), the Labour Court arrived at a contrary conclusion, dismissing the claims on the finding that the concerned workmen had not been engaged directly by the Nagar Nigam but rather through a contractor, and hence had no enforceable right to reinstatement or regularization against the Respondent Employer.

3.5. Aggrieved by the adverse portion of the awards (i.e., those granting reinstatement), the Respondent Employer, Ghaziabad Nagar Nigam, filed several writ petitions before the High Court of Judicature at Allahabad, challenging the Labour Court's findings. On the other hand, the workmen whose claims were dismissed by the other set of awards also approached the High Court by filing their own writ petitions. All these writ petitions were heard together, culminating in the common judgment dated 01.03.2019, which partly modified the Labour Court's conclusions.

3.6. Through the impugned judgment, the High Court held that while the Labour Court was correct in exercising jurisdiction under the U.P. Industrial Disputes Act (since municipalities could be treated as "industry"), there remained factual complexities as to whether the workmen were genuinely on the rolls of the Nagar Nigam or were provided by contractors. The High Court also noted that the State Government had, by notifications/orders, placed a ban on fresh recruitments in Municipal Corporations, thereby restricting direct appointments to any post.

Ultimately, the High Court partially modified the relief granted, directing re-engagement of the workmen on daily wages, with pay equivalent to the minimum in the regular pay scale of Gardeners, while allowing future consideration of their regularization if permissible by law.

4. Both the Appellant Workmen and the Respondent Employer have now approached this Court by way of Special Leave Petitions. The workmen primarily seek full reinstatement with back wages and a direction to secure their regularization, whereas the Respondent Employer seeks to quash the modifications ordered by the High Court on the ground that the High Court exceeded its jurisdiction by granting partial relief akin to regular employees, contrary to constitutional provisions and the State's ban on recruitment.

5. Learned counsel for the Appellant Workmen made the following submissions:

I. Continuous Service & Comparable Duties : The Appellant Workmen had continuously discharged horticultural and maintenance duties— like planting trees, upkeep of public parks, and general beautification—under the direct supervision and control of the Respondent Employer for periods often exceeding a decade. They insist such longstanding, continuous work parallels that of permanent Gardeners.

II. Direct Engagement & Wage Disbursement : They aver that their wages, though inadequate, were paid directly by the Horticulture Department of the Respondent Employer, nullifying the Employer's claim of contractual hiring. Muster rolls and internal notes are cited to show direct employer-employee relations.

III. Illegal Termination : Alleging violation of Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, the Appellant Workmen maintain their abrupt termination in July 2005 (during pendency of conciliation proceedings) was devoid of due process and statutory payments, rendering it patently illegal.

IV. Entitlement to Reinstatement & Regularization : Given their long service and the principle of "equal pay for

equal work," the Appellant Workmen submit they deserve full reinstatement with back wages and a legitimate pathway to regularization, as opposed to the partial relief of mere daily-wage re-engagement prescribed by the High Court.

6. On the other, the learned counsel for the Respondent Employer, Ghaziabad Nagar Nigam made the following submissions:

- I. Compliance with Constitutional Requirements :** Emphasizing the constitutional scheme of public employment, it is urged that there was (and remains) a ban on fresh recruitment in Municipal Corporations, and no proper selection process was ever followed to appoint the Workmen on any sanctioned posts.
- II. No Direct Employer-Employee Relationship :** The Respondent Employer contends that all horticulture work was carried out through independent contractors appointed via tender processes. It claims any partial wage documentation cited by the Workmen fails to establish direct engagement.
- III. Inapplicability of Regularization :** Relying on *Secretary, State of Karnataka v. Umadevi*¹, it is asserted that no daily wager can claim permanent absorption without adherence to constitutional requirements and availability of duly sanctioned vacancies.
- IV. Inadequate Proof of 240 Days' Service :** The Respondent Employer points out that the Workmen did not convincingly demonstrate they completed 240 days of continuous work in any calendar year, thus undermining the assertion that their cessation from service was illegal.
- V. Challenge to Modified Relief:** Finally, it argues that the High Court's direction to pay minimum-scale wages and to consider the Workmen for future regularization oversteps legal boundaries, disregards the recruitment ban, and fosters an impermissible avenue of public employment. The Respondent Employer, therefore, seeks the quashing of the impugned judgment.

7. Having heard the arguments and submissions of the learned counsel for the parties and having perused the

record, this Court is of the considered opinion that the nature of engagement of the Appellant Workmen, the admitted shortage of Gardeners, and the circumstances under which their services were brought to an end, merit closer scrutiny.

8. It is undisputed that, while the Appellant Workmen were pressing for regularization and proper wages through pending conciliation proceedings, the Respondent Employer proceeded to discontinue their services, without issuing prior notice or granting retrenchment compensation. At this juncture, it is to have a look at the requirements of Section 6E of the U.P. Industrial Disputes Act, 1947 which has been reproduced hereunder:—

“6E. [Conditions of service, etc. to remain unchanged in certain circumstances during the pendency of proceedings. [Inserted by U.P. Act No. 1 of 1957.]

(1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before a Labour Court or Tribunal in respect of an industrial dispute, no employer shall,
-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding, or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman concerned in such dispute save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, -

- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding, or
- (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2) no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute, -

- (a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding, or
- (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, such with the express permission in writing of the authority before which the proceeding is pending. Explanation. - For the purposes of this sub-section, a 'protected workman' in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall not exceed one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one

hundred protected workmen and for the aforesaid purpose, the State Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which they may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a Board, Labour Court or Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit."

9. On a plain reading of this section, we can deduce that any unilateral alteration in service conditions, including termination, is impermissible during the pendency of such proceedings unless prior approval is obtained from the appropriate authority. The record in the present case does not indicate that the Respondent Employer ever sought or was granted the requisite approval. Prima facie, therefore, this conduct reflects a deliberate attempt to circumvent the lawful claims of the workmen, particularly when their dispute over regularization and wages remained sub judice.

10. The Respondent Employer consistently labelled the Appellant Workmen as casual employees (or workers engaged through an unnamed contractor), yet there is no material proof of adherence to Section 6N of the U.P. Industrial Disputes Act, 1947, which mandates a proper notice or wages in lieu thereof as well as retrenchment compensation. In this context, whether an individual is classified as regular or temporary is irrelevant as retrenchment obligations under the Act must be met in all cases attracting Section 6N. Any termination thus effected without statutory safeguards cannot be undertaken lightly.

11. xxxx

12. xxxx

13. xxxx

14. The Respondent Employer places reliance on Umadevi (supra)² to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite “temporary” employment practices as done by a recent judgment of this court in Jaggo v. Union of India³ in the following paragraphs:

“xxxxxxxxxx”

16. xxx

17. xxx

18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

- I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.
- II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.
- III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.**
- 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 long-time employees are not indefinitely retained on daily wages contrary to statutory and equitable norms.

19. In view of the above, the appeal(s) filed by the workmen are allowed, whereas the appeal(s) filed by the Nagar Nigam Ghaziabad are dismissed.”

(Emphasis supplied)

On a coalesce of the judgments rendered by the Apex Court in the afore-quoted cases, which were in the aftermath of the judgment in the case of **UMADEVI (3) *supra***, would in unmistakable terms indicate that regularization of employees is not a concept that is obliterated, but could be considered on several parameters laid down in the said judgments. One unmistakable stream that runs through judicial thinking of judgments of the Apex Court is that, regularization of the services of the employees engaged to work for the State for long years should be considered, failing which, it would amount to violation of Article 14 of the Constitution of India.

20. Therefore, on a blend of the judgments rendered by the Apex Court as afore-quoted, what would unequivocally mistakably emerge is, the State practising exploitation of human labour, should by judicial orders be curbed. The Apex Court

terms the engagements made in those cases, as exploitative engagements. In the case at hand even, I deem it appropriate to observe that the petitioners have in their prime youth worked for the services of the State, as daily wagers. They are continued to be in that position even today, with certain benefits conferred from time to time. They are in the last leg of their services. If their services are not directed to be regularised today, it would be putting a premium on the act of the State, exploiting human labour, as these petitioners, if left in the lurch will have to wander for their livelihood after having served the State for 39 years and 32 years respectively.

21. In the light of such exploitation which has to be stopped and stopped forthwith, the subject case becomes a classic illustration where *mandamus* is required to be issued, not for considering the cases of the petitioners, but to regularise their services, as any direction, if issued only to consider the cases of the petitioners, it will generate another round of litigation, as the State would get a hand, to handle against the petitioners. Therefore, positive *mandamus* ensues in the case at hand only to save the petitioners from the brunt of another litigation.

22. One more aspect that is required to be noticed is that, there is no explanation from the hands of the State as to why the cases of these petitioners are deliberately left out while scores and scores of the services of the daily wagers have been regularised pursuant to circulars issued, in the aftermath of **UMADEVI(3)**. Therefore, the State has practised, pick and choose procedure in considering the cases for regularization. This is what the Apex Court has observed and deprecated in the case of **STATE OF MADHYA PRADESH v. SHYAM KUMAR YADAV⁹**, wherein it is held as under:

"2. The issue that arose for consideration before the High Court in the second round of litigation was whether respondent No.1 was entitled to be absorbed as a regular employee, keeping in view the Government policy/circular and the long period of service rendered by him as a daily wager. **The High Court held that respondent No.1 was entitled to regularisation of his services as several persons junior to him had already been absorbed.** The intra-court appeal preferred by the State has also been turned down by a Division Bench of the High Court vide the impugned order dated 16-03-2018.

3. We have heard learned Additional Advocate General for the petitioners as well as learned counsel for respondent No.1 at a considerable length and carefully perused the material placed on record.

4. We are constrained to observe that the affidavits or the documents filed on behalf of the petitioner-State from time to time, particularly the affidavit of the Commissioner,

⁹ Special Leave to Appeal No.25609 of 2018 decided on 22-07-2024

Technical Education, Bhopal, in purported compliance of our order dated 22-04-2024, are vague, evasive, and misleading.

5. It is true that an employee engaged on daily wages has no legally vested right to seek regularisation of his services. However, if the competent authority takes a policy decision within the permissible framework, its benefit must be extended to all those who fall within the parameters of such a policy. Authorities cannot be permitted to pick and choose in such circumstances.

6. The fact that respondent No.1 has worked as a daily wager from 2005 to 2009 is not in dispute. The eligibility for the post he holds has also not been controverted. **The fact that he initially entered through the process in conformity with Articles 14 and 16 of the Constitution is also not a serious issue.** That being so, we see no reason to interfere with the impugned order passed by the High Court directing the petitioners to confer the status of a regular employee on respondent No.1

7. The Special Leave Petition is, accordingly, dismissed.

8. The petitioners are directed to do the needful and grant all the benefits, including arrears of pay and seniority, to respondent No.1 from the due date."

(Emphasis supplied)

The Apex Court observed that practice of State of Madhya Pradesh in pick and choose for regularisation violates Articles 14 and 16 of the Constitution of India. The said observation would become applicable to the case at hand as well.

22. A parting observation in the case at hand would not be inapt. The judgments rendered by the Apex Court as quoted

above would leave none in doubt that the employees who have served for long years with minimum threshold of 10 years and beyond, and if they come within the parameters of what the Apex Court noted as quoted hereinabove, the State itself should consider regularisation of those cases, *albeit*, on case to case basis, as a person who is working on daily wage, would not be in a position to bear the brunt of litigation and it is not the law that every person should be driven to the Court seeking the very same relief that is granted to similarly situated persons, if they are in fact, similar.

23. It becomes apposite to refer to the observations of the division bench in the case of **NAGAPPA VS STATE OF KARNATAKA**¹⁰, where the division bench observes as follows:

"2. We have perused the said decisions and also the averments made in the Writ Petition. In our opinion, **it is not necessary for every person to approach this Court for a relief similar to the one already granted by this Court in the aforesaid decisions. If a decision has been rendered by this Court, it would be proper for the authorities to follow and extend the benefit of that decision in like cases coming before them. That should be the guiding principle to be borne in mind in the administration. It is not proper to drive every person**

¹⁰ ILR 1986 Kar 3093

to seek relief in this Court. It is indeed the duty of the authorities to extend the benefits of the concluded decision of this Court to all other similar cases.

(Emphasis supplied)

Therefore, the State should take steps towards the observations of the division bench, which would result in avoiding mushrooming of litigations and save docket explosion.

24. For the aforesaid reasons, the following:

ORDER

- (i) The writ petition is allowed.
- (ii) A *mandamus* issues to the respondents to regularise the services of the petitioners from the dates on which the petitioners completed ten years of service.
- (iii) The petitioners shall become entitled to fixation of their salaries on such regularisation as obtaining to a permanent employee from the dates they complete 10 years of services and would not be entitled for arrears of salary, but the period shall be treated for all consequential benefits that would flow from such regularisation.
- (iv) The services rendered by the petitioners throughout shall be counted for the purpose of determination of pension and all other incidental terminal benefits.

- (v) The aforesaid directions shall be complied with by the respondents within 12 weeks from the date of receipt of a copy of this order, if not earlier.

Ordered accordingly.

SD/-
JUSTICE M.NAGAPRASANNA

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CT:SS