

(2025) 12 KL CK 1889

In the High Court Of Kerala

Case No : Writ Petition (C) No. 39454 Of 2016

Executive Engineer Office Of The Executive Engineer	APPELLANT
Vs	
Secretary, Malampuzha Irrigation Thozhilali Union (INTUC)	RESPONDENT

Date of Decision : 16-12-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 32, 226
Industrial Disputes Act, 1947 — Section 2(ra)

Citation : (2025) 12 KL CK 1889

Hon'ble Judges : M.A.Abdul Hakhim, J

Bench : Single Bench

Advocate : P A Davis, B.Ashok Shenoy, K.V.George, P.S.Gireesh Kum.Pooja Dilip, P.N.Rajagopalan Nair, Riyal Devassy, Salih P.A., Arjun R Naik, Thejalakshmi R.S., Umasanker U.U.

Final Decision : Partly Allowed

Judgement

M.A.Abdul Hakhim, J

1. The Petitioner is challenging Ext.P3 Award of the Industrial Tribunal, Palakkad, in favour of twenty numbers of Workmen in I.D. No.10/2014 (Old No.48/1995). The Petitioner is the Executive Engineer, Irrigation Division, Malampuzha Dam of the State Government. The Petitioner is the Management in I.D. No.10/2014. The Respondent No.1 is the Trade Union which represented the Respondents Nos.2 to 21/Workmen in I.D. No.10/2014 before the Industrial Tribunal. Respondent No.5 died during the pendency of the Writ Petition, and the Additional Respondent Nos.22 to 24 were impleaded as his legal representatives.

2. The issue referred for adjudication to the Tribunal was whether the denial of permanency of the employment to the Workmen who were the garden workers of Malampuzha Dam is justifiable or not.

3. Since the Management did not appear before the Tribunal, the Tribunal passed an ex parte Award dated 09.01.1997 in favour of the Workmen. The Management

filed O.P. No.35899/2001 challenging the said ex parte Award, and this Court passed Ext.P1 judgment dated 11.11.2013 setting aside the ex parte Award dated 09.01.1997 and remitted the I.D. back to the Tribunal for fresh consideration.

4. The claim of the Workmen before the Tribunal was that they had been working in Malampuzha garden since August 1992 under the direct supervision of the Garden Curator of the Management. The Executive Engineer and Assistant Executive Engineer have been supervising their work. During their continuous employment, the Management executed an Agreement with the Workmen for the convenient allotment of the work and also for the safe custody of the implements provided by the Management. The Management published a newspaper advertisement on 28.10.1993, inviting persons who were working in the garden and other local persons who were willing to work in the garden to report at the office of the garden on 29.10.1993 for preparing the list of workers. The Workmen submitted applications in response to the advertisement. Since there was no response from the Management, the Workmen approached this Court by filing O.P. No.17103/1993, and the Management was directed to consider and pass orders on the applications of the Workmen. On the inaction of the Management, the Workmen again approached this Court by filing O.P. No.7899/1994, and this Court directed the Management to consider the Representation of the Workmen as per the judgment dated 14.06.1994. Since the Management did not consider the Representation of the Workmen, the Respondent No.1 initiated conciliation proceedings by submitting a Petition before the District Labour Officer (DLO), and on failure of the conciliation proceedings, the present Industrial Dispute was raised.

5. The contention of the Management before the Tribunal was that the Workmen were not directly engaged by the Management. They have been engaged by the Management through a labour contractor. The Workmen were never paid any salary or wages by the Management. No order of appointment was issued to the Workmen. The names of the Workmen were not reflected anywhere in the office records. There is no master – servant relationship between the Management and the Workmen. The Management will not come under the definition of an industry defined under the Industrial Disputes Act, and hence, the Reference is incompetent.

6. The Tribunal passed Ext.P3 Award dated 27.10.2014 in favour of the Workmen, holding that the Workmen are entitled to be regularised in service provided they have not completed the age of 55 years as on 14.06.1994 (which is the date of the judgment in O.P. No.7899/1994) with all service benefits except back wages.

7. I heard the learned Senior Government Pleader, Sri. P.A. Davis, for the Petitioner and the learned Counsel for the Respondents, Sri. P.S. Gireesh.

8. The learned Senior Government Pleader contended that the direction of the

Tribunal to regularise the service of the Workmen is directly against the dictum laid down by the Hon'ble Supreme Court in *Secretary, State of Karnataka and Others v. Umadevi (3) and Others* [(2006) 4 SCC 1]. The Tribunal wrongly shifted the burden to prove the nature and manner of engagement of the Workmen on the Management. There is nothing on record to prove the engagement of the Workmen by the Management. Ext.P2 Quotation dated 07.12.1993 would reveal that the Workmen were engaged by contractors and not by the Management. The Workmen were engaged in Malampuzha garden purely on a casual basis through an independent contractor, and hence there was no employer – employee relationship between the Workmen and the Management. While setting aside the original ex parte Award as per Ext.P1, this Court clearly found that the Workmen were casual workers who were not appointed in accordance with the procedure prescribed under the Kerala State & Subordinate Services Rules (K.S. & S.S.R); and that they could not claim permanency unless the Government decides that they should be made permanent by certain known procedures. It is also observed that the Workmen has no case that any special regulation has been framed to enable their appointment to be made permanent, that even if there is continuous employment of a casual nature under the supervision of the Management, being a public employment, the question is whether the Tribunal can direct the workers to be made permanent and having regard to the law laid down by the Hon'ble Supreme Court in *Umadevi's case (supra)*, such a procedure is not permissible. In view of these specific findings, the Tribunal ought not to have directed the Management to regularise the service of the Workmen. The direction to regularise service is illegal, as there are no sanctioned posts for accommodating the Workmen. There is nothing on record to prove that the Management adopted any unfair labour practice, and in such a case, the Industrial Tribunal has no jurisdiction to order regularisation, invoking its powers under the Industrial Disputes Act, 1947 (ID Act). The learned Senior Government Pleader cited the decisions of the Hon'ble Supreme Court in *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Others* [(2005) 5 SCC 122], *M.P. Housing Board and Another v. Manoj Shrivastava* [(2006) 2 SCC 702], *Umadevi (supra)*, *U.P. Power Corporation Ltd. and Another v. Bijli Mazdoor Sangh and Others* [(2007) 5 SCC 755], *State of Uttaranchal and Another v. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad* [(2007) 12 SCC 483], *Hari Nandan Prasad and Another v. Employer I/R To Management of Food Corporation of India and Another* [(2014) 7 SCC 190] and *Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare and Another* [(2016) 1 SCC 521] in support of his contentions.

9. Per contra, the learned Counsel for the Workmen contended that the Industrial Tribunal is perfectly justified in ordering the regularisation of the Workmen, invoking its power under the ID Act. The denial of regularisation and keeping the Workmen as temporary workers when permanent and regular works are there is an unfair labour practice defined under Section 2(ra) of the ID Act read with Clause 10 of the Fifth Schedule. It is on record, as per Ext.W7 marked in the

I.D., that the Management regularised large numbers of workers who are similarly placed with the Workmen in this case. The Tribunal correctly put the burden on the Management to prove the nature of employment, as the Management, being a public authority, is expected to maintain all records with respect to the persons employed by it. The contention of the Management that there is no sanctioned post for regularising the service of the Workmen is unsustainable since, admittedly, there is regular work of permanent nature in the Malampuzha garden of the Management. The decision of the Hon'ble Supreme Court in Umadevi (supra) does not fetter the power of the Industrial Tribunal to regularise the Workmen, invoking its powers under the ID Act. The Management has regularised workers who are junior to the Workmen in this case. The regularisation of the Workmen was not done by the Management only on account of the pendency of the litigation as revealed from Ext.W13 marked in the I.D. issued by the District Collector, Palakkad, to the Respondent No.1. The learned Counsel cited the decisions of the Hon'ble Supreme Court in Maharashtra State Road Transport Corporation and Another v. Casteribe Rajya Parivahan Karmchari Sanghatana [(2009) 8 SCC 556], Durgapur Casual Workers Union and Others v. Food Corporation of India and Others [(2015) 5 SCC 786], Jaggo v. Union of India [AIR 2025 SC 296], Shripal and Another v. Nagar Nigam, Ghaziabad [2025 SCC OnLine SC 221] and Dharam Singh v. State of U.P. [AIR 2025 SC 3897] and the decision of this Court in Sabu C. v. Union of India [2025 KHC 346] in support of his contentions.

10. I have considered the rival contentions.

11. In Ext.P1 Judgment, this Court found that the Irrigation Department is to be treated as an Industry, following the decision of the Hon'ble Supreme Court in R.M. Yellatti v. Assistant Executive Engineer [(2006) 1 SCC 106]. Hence, there is no need to consider this question again.

12. It is an admitted fact that the Workmen in this case had been working in the Malampuzha garden of the Management for maintaining the garden. The case of the Workmen is that they had been working under the direct supervision of the Garden Curator. The case of the Management is that the Workmen were employed only through a contractor, and hence there was no employer – employee relationship between the Workmen and the Management. When the Management admitted that the Workmen had been working in Malampuzha Garden belonging to the Management, it is for the Management to prove that they were not the employees of the Management. Even though the Management contended that the Workmen had been engaged through contractors, none of the contracts was produced before the Industrial Tribunal. None of the alleged contractors was examined to prove the contract. Not even the date of the contract or the name of the contractor is stated either in the pleading or in the evidence. In Shripal (supra) cited by the learned Counsel for the Respondents, it is held that direct employer - employee relationship exists when the employer fails to produce evidence of contractual hiring and demonstrates a pattern of

direct oversight and wage disbursement; that the absence of contract documentation, contractor's invoices, or third-party wage payments indicates direct employment rather than outsourced engagement and that direct control, supervision, and payment of wages by the employer establishes employer - employee relationship even without formal documentation. Hence, the Industrial Tribunal rightly found that the Workmen were the temporary employees of the Management.

13. The next question to be considered is whether the Workmen are entitled to be regularised in service. The contention of the Workmen is that they started working in Malampuzha Garden since August 1992.

14. The contention of the learned Counsel for the Management is that the regularisation of the Workmen will be against the principles laid down by the Hon'ble Supreme Court in *Umadevi* (supra). In *Umadevi* (supra), the Constitutional Bench of the Hon'ble Supreme Court held that if the original appointment was not made by following a due process of selection as envisaged by the relevant rules, employee would not be entitled to any right to be absorbed or made permanent in service, merely because he had continued under cover of an order of the Court; that temporary employees do not have any right to regular or permanent public employment; that unless the recruitment itself was made regularly and in terms of the constitutional scheme, Supreme Court and High Courts should not issue directions for regularisation, permanent continuation or absorption; that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature; that such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission; that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service.

15. Learned Senior Government Pleader cited *Hari Nandan Prasad* (supra) to substantiate that in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker, despite the availability of posts, has continued as a daily wage worker/ad hoc/temporary worker for number of years. It is held that mere long service as daily wager cannot be basis for directing regularisation and that giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution; that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the Workmen, which includes the relief of giving the status of permanency to

the contract employees, such statutory power does not get denuded by the judgment in Umadevi's case (supra), that it is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to employ workers on temporary/daily-wage basis and taking the same work from them and making them do some purpose which were performed by the regular workers but paying them much less wages.

16. In Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh (supra) cited by the learned Senior Government Pleader, it is held that when Workmen were not engaged by university by following due procedure, they were merely casual workers and they do not have any vested right to be regularised against the posts; that the High Court fell in error in affirming the award passed by the Labour Court directing regularisation. However, the Hon'ble Supreme Court directed compensation of Rs.4 lakhs to be paid to Workmen in view of the fact that they were facing hardship on account of pending litigation for more than two decades and that some of them were over-aged and lost the opportunity to get a job elsewhere.

17. In U.P. Power Corporation Ltd. (supra) cited by the learned Senior Government Pleader, it is held that in the absence of employer-employee relationship, regularisation cannot be directed; that the question as regards the effect of the Industrial Adjudicators' powers was not directly in issue in Umadevi's case; that the foundational logic in Umadevi's case is based on Article 14 of the Constitution of India; that though the Industrial Adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14; and that if the case is one which is covered by the concept of regularization, the same cannot be viewed differently.

18. In Maharashtra State Road Transport Corporation (supra) cited by the learned Counsel for the Respondents, the Hon'ble Supreme Court held that Umadevi (supra) is an authoritative pronouncement for the proposition that the Supreme Court (under Article 32) and the High Courts (under Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme; that Umadevi (supra) does not denude the Industrial and Labour Courts of their statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer where the posts on which they have been working exist; that Umadevi (supra) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under the ID Act, once unfair labour practice on the part of the employer is established. The Hon'ble Supreme Court upheld the direction given by the Industrial Courts to accord the status of permanency with other benefits, finding that Industrial and Labour Courts enjoy wide powers and it includes power to accord permanency to employees affected by unfair labour practice; that the

Appellant Corporation indulged in unfair labour practice of engaging persons on contract basis for cleaning buses even though work was of permanent nature and posts of cleaners also existed.

19. In *Jaggo* (supra) cited by the learned Counsel for the Respondents, the Hon'ble Supreme Court directed to take back the temporary workers on duty and to regularise their services forthwith holding that the nature of duties performed by temporary employees can be considered essential and indistinguishable from regular posts; that the temporary workers performed essential duties indispensable to the day to day functioning of the Central Water Commission offices, including maintaining hygiene, cleanliness, and conducting critical maintenance tasks; that despite being labelled as "part time workers", they performed the tasks on a daily and continuous basis over extensive periods. It is further held that the abrupt termination of the services of such temporary workers was arbitrary and devoid of justification. The disparity in the regularisation of workers with lesser tenure or comparable roles violates the principles of equality enshrined in Article 14 and Article 16 of the Constitution of India. It distinguished between "irregular" and "illegal" appointments, emphasizing that long-serving employees in irregular appointments performing essential functions should be considered for regularization. The Hon'ble Supreme Court highlighted that the pervasive misuse of temporary employment contracts reflects a broader systemic issue that adversely affects workers' rights and job security. It is emphasized that Government institutions bear a greater responsibility to avoid exploitative employment practices and should lead by example in providing fair and stable employment. It is held that the long and uninterrupted service of the Workmen, extending well beyond ten years, cannot be dismissed merely by labelling their initial appointments as part time or contractual; that their employment must be considered in light of their sustained contribution and the integral nature of their work; that 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; that the recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. The Hon'ble Supreme Court expressed that it is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. The Hon'ble Supreme Court cautioned that while the judgment in *Umadevi* (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; that 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; that government departments often cite the judgment in *Umadevi* (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; and that this selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

20. In *Shripal* (supra) cited by the learned Counsel for the Respondents, it is held that *Umadevi* (supra) cannot serve as a shield to justify exploitative engagements persisting for years without the employer undertaking legitimate recruitment.

21. In *Ajaypal Singh v. Haryana Warehousing Corporation* [(2015) 6 SCC 321], the Hon'ble Supreme Court observed that the provisions of ID Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in *Umadevi's* case and that the issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in *Umadevi's* case; that the ID Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein; that it prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees.

22. In *Sabu C.* (supra) cited by the learned Counsel for the Respondents, the Division Bench of this Court held that the judgment in *Umadevi's* case ought not have been interpreted to deny the legitimate claims of the employees who have been serving for considerable length of time; that the dictum laid down in *Umadevi's* case cannot be used as a shield to justify exploitative engagements persisting for years without the employer undertaking legitimate recruitment.

23. In view of the aforesaid legal propositions laid down by the Hon'ble Supreme Court in *Maharashtra State Road Transport Corporation*, *Jaggo*, *Shripal* and *Ajaypal Singh*, and in the Division Bench decision of this Court in *Sabu C.* (supra), the principles laid down in *Umadevi* (supra) are not applicable to the case on hand. In the case on hand, there was regular work of permanent nature in the Malampuzha garden and the Workmen had been attending to the same. Their appointment could not be said to be illegal. They performed essential duties indispensable to the day-to-day functioning of the Malampuzha garden on a daily and continuous basis over extensive periods. The nature of duties performed by them can be considered essential and indistinguishable from regular posts. The Management had been indulging in unfair labour practice of engaging Workmen on a temporary basis even though the work was of permanent and regular nature. The Management had been exploiting the Workmen, keeping them as temporary workers for years. The Management did not choose to make regular appointments for these essential works. They have shown disparity in the matter of regularisation. The Workmen were not considered for regularisation when, admittedly, large numbers of workers were regularised by the Management. The case of the Workmen is that even their juniors were regularised. Ext.W13 marked in the I.D. would prove that the

request of the Workmen for regularisation was not considered on account of the pendency of the litigation. I find force in the submission of the learned Counsel for the Workmen that they were excluded from regularisation since they filed cases against the Management. It is useful to refer to Durgapur Casual Workers Union (supra), cited by the learned Counsel for the Respondents, in which the Hon'ble Supreme Court upheld the finding of the Tribunal that there was unfair labour practice on the part of Management in not regularising the casual employees on daily wage basis and further held that it was not open to the High Court to come to the finding that the initial appointments of Workmen were in violation of Article 14 and Article 16 of the Constitution and that it was not open to the High Court to interfere with the award of the Tribunal directing absorption of the Workmen. In view of this decision, the refusal of the Management to regularise the Workmen amounts to unfair labour practice, and in such a case, the Industrial Tribunal has ample power to invoke its jurisdiction under the ID Act to order regularisation. In Dharam Singh (supra) cited by the learned Counsel for the Respondents, it is held that selective regularisation in the same establishment, while continuing others on daily wages despite comparable tenure and duties with those regularised, is a clear violation of equity.

24. It is true that in the Ext.P1 judgment of this Court in O.P. No.35899/2001 remanding the matter back to the Industrial Tribunal, this Court has entered certain findings in favour of the Management on the basis of Umadevi (supra). This Court held that the appointments to the Irrigation Department is made in accordance with the procedure prescribed under K.S. & S.S.R; that since it is not in dispute that the casual workers were not appointed in accordance with the procedure said, they cannot claim permanency unless the Government decides that they should be made permanent by certain known procedure; that even if there is continuous employment of a casual nature under the supervision of the Management, the question is, being a public employment, whether the Tribunal can direct workers to be made permanent; and that such procedure is impermissible having regard to the law laid down by the Hon'ble Supreme Court in Umadevi (supra). This Court thought it fit to remand the matter back to the Tribunal for reconsideration. In such a case, it is permissible to take a different view than that of Ext.P1, considering the subsequent binding decisions of the Hon'ble Supreme Court explaining the scope and applicability of Umadevi (supra).

25. Hence, I find that the challenge of the Petitioner against the Ext.P3 Award based on Umadevi (supra) is unsustainable.

26. The next contention of the learned Senior Government Pleader is that the direction to regularise service is illegal, as there are no sanctioned posts for accommodating the Workmen. In Madhyamik Shiksha Parishad (supra), the Hon'ble Supreme Court found that in the absence of sanctioned posts in existence, the High Court committed an error in ordering the reinstatement of the writ petitioners as casual workers on payment of wages admissible to regular employees doing similar work and further directing their absorption as Lower

Division Clerks as and when posts fell vacant. In *M.P. Housing Board (supra)*, it is held that unless a daily wager is appointed against a duly sanctioned vacant post and upon following the statutory law operating in the field, he does not hold a post or derive any legal right in relation thereto and that merely because a person had been working for more than 240 days, he does not derive any legal right to be regularised in service. In *Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad (supra)* arising from an award of the Labour Court ordering regularisation, the Hon'ble Supreme Court remitted the matter to the Tribunal to consider the factual background and to decide the matter afresh in the light of what has been stated in *Umadevi's case*, holding that before any direction for regularisation can be given, the factual position has to be noted as to whether there was any sanctioned post.

27. The Management is in requirement of regular workers for maintaining Malampuzha garden throughout the year. Since the works are permanent and regular in nature, there should have been sanctioned posts for workers for maintaining the Malampuzha garden. If there are no sanctioned posts, it would clearly indicate that the intention of the Management is to exploit temporary workers by employing them to carry out regular work without making payments of the eligible amounts and service benefits. It is admitted across the bar that all the Workmen attained the age of superannuation. In such a case, there is no scope for any regularisation for continuing the service. Hence, there is no need to enquire about the existence of any sanctioned post to accommodate the Workmen.

28. In *Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353]*, the Hon'ble Supreme Court held that the relief of reinstatement with full back wages were not being granted automatically only because it would be lawful to do so and several factors have to be considered, few of them being as to whether the appointment of the workman had been made in terms of statutory rules and the delay in raising the industrial dispute. Here, the Workmen were not appointed through a regular recruitment process. They continued the work for a long period, accepting wages during the pendency of the litigation. They are only entitled to get service benefits on the basis of the Ext.P3 Award. It would be a complicated process to regularize their service for the purpose of calculating their service benefits at this distance of time. The Ext.P3 Award is dated 27.10.2014, and considering the long-time gap thereafter, I am of the view that it is a fit case to interfere with the relief granted by the Industrial Tribunal for the purpose of moulding the relief. Considering the facts and circumstances of the case, I deem it appropriate to grant a compensation of Rs.3,00,000/- to each of the Workmen in place of the regularisation with service benefits granted by the Industrial Tribunal.

29. Accordingly, this Writ Petition is allowed in part, modifying Ext.P3 Award of the Industrial Tribunal, Palakkad, setting aside the relief of regularisation with service benefits, and granting a compensation of Rs.3,00,000/- to each of the

Workmen who had not completed the age of 55 years as on 14.06.1994. In case of the death of any Workman, his legal representatives are collectively entitled to the said compensation of Rs.3,00,000/-. The Petitioner is directed to pay the said compensation within a period of three months from the date of receipt of a copy of this judgment, failing which the said compensation shall carry interest @ 9% from the date of this judgment till realisation.