(2026) 08 OHC CK 1535

In the Orissa High Court, Cuttack Bench

Case No : W.P.(C) No.16792 of 2022

Iswar Chandra Rout APPELLANT

Vs

State Of Odisha & Anr. RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Constitution of India — Articles 226 and 227, 14, 16 and 21
OCS (Pension) Rules, 1992
Rules, 1992
Rules, 1938

Citation : 2026 INSC 99

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : Mr. S.K. Das, Mr. S. Das, Mr. S.K. Patra

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel appearing for the Parties.

3. The present Writ Petition has been filed *inter alia* with the following prayer:-

> *"Under the above circumstances, it is therefore humbly prayed that the Hon'ble Court be graciously pleased to quash the order dtd: 09.06.2022 under Annexure-4 and direct the Opposite Parties to regularize the service of the petitioner from 05.02.1994 instead of 21.05.2016 and to grant him all consequential service and financial benefits including the benefit of pension under the OCS (Pension) Rules, 1992 within a stipulated period as deem fit and proper;*
>
> *And/or pass any other appropriate writ/writs, order/orders, direction/directions in the fitness of the case."*

4. It is contended that Petitioner was appointed as a Peon on ad hoc basis in the leave vacancy arose due to promotion of the incumbent employee from the post

of Peon to the post of Duftary vide order dtd.05.02.1994 under Annexure-1.

4.1. It is contended that Petitioner even though was appointed as against the leave vacancy on ad hoc basis but he was allowed to continue as such, till he was ultimately regularized vide order dtd.21.05.2016 under Annexure-2.

4.2. It is contended in the order of regularization so issued, it was also admitted that Petitioner was continuing against the post of Peon on ad hoc basis in which he was regularized w.e.f. 05.02.1994.

4.3. Learned counsel appearing for the Petitioner contended that after being so regularized vide order dtd.21.05.2016 under Annexure-2, Petitioner when raised a claim to ante-date his date of regularization to 05.02.1994 i.e. the initial date of appointment so issued under Annexure-1 and the same when was not considered, he approached this Court by filing W.P.(C) No.9299 of 2022. This Court vide order dtd.29.04.2022 while directed Opposite Party No.1 to consider the Petitioner's claim, the same was rejected vide the impugned order dtd.09.06.2022 under Annexure-4. While rejecting such claim of the Petitioner to ante-date his date of regularization, claim of the Petitioner to get the benefit of pension under the OCS (Pension) Rules, 1992 was also rejected.

4.4. It is contended that claim of the Petitioner to get the benefit of pension was rejected only on the ground that Petitioner's initially engagement on ad hoc basis being made after 12.04.1993, in view of the stipulation contained in the Finance Department Resolution dtd.15.05.1997, Petitioner is not eligible and entitled to get the benefit of regularization w.e.f. 05.02.1994.

While assailing such stand taken in the impugned order, learned counsel appearing for the Petitioner relied on a decision of this Court so rendered in W.A No.1445 of 2024. This Court in Para-4.2. of the said judgment has held as follows:-

> "4.2. *The second contention of Mr. Panda that there was a complete embargo against engagement otherwise than on regular recruitment w.e.f. 12.04.1993 and therefore, any entry post-ban is illegal is difficult to countenance. Reasons for this are not far to seek; firstly, a ban of the kind cannot be treated as an impregnable China Wall; secondly, even after the ban, thousands of employees were engaged, may be in violation thereof, and the State cannot feign ignorance of the same. Secondly, in thousands of cases, this Court and the Apex Court have granted regularisation in worthy matters notwithstanding ban of the kind; thirdly, no action is taken against the officials who trampled the ban and made such engagements. Ban of the kind was only a measure of economic austerity and not anything beyond. If the ban were to be mandatory, the State would not have ignored its violation with impunity; lastly, whatever arguable 'illegality', would diminish year by year and should vanish at a long point of time, as has happened in this case."*

4.5. It is also contended that since Petitioner which is not disputed continued as against a vacant post of Peon, though on ad hoc basis w.e.f. 05.02.1994 and he continued as such even after being regularized vide order dtd.21.05.2016, till he attained the age of superannuation on 30.04.2022, in view of the recent decision of the Hon'ble Apex Court in the case of ***Jaggo vs. Union of India & Ors.,***

2024 SCC OnLine SC 3826; Shripal & Anr. vs. Nagar Nigam, Ghaziabad, 2025 SCC OnLine SC 221, as well as ***Dharam Singh & Ors. vs. State of U.P. & Anr. (Civil Appeal No(s).8558 of 2018*** and another decision of the Apex Court in the case of ***Bhola Nath Vs. State of Jharkhand and Others***, 2026 INSC 99 and in the case of ***Sukhendu Bhatacharjee & Ors. vs. the State of Assam & Ors.*** reported in 2026 INSC 523.

4.6. View expressed by the Hon'ble Apex Court in the case of ***Jaggo*** in Para-22 to 25 and 27 reads as follows:-

"22. *The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*

23. *The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration6 encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.*

24. *The landmark judgement of the United State in the case of Vizcaino v. Microsoft Corporation7 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.

xxxx xxxx xxxx xxxxx

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."*

4.7. Hon'ble Apex Court in the case of ***Shripal*** in Para-14, 15, 17 & 18(IV)has held as follows:-

"14. *...... More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment.*

15. *……. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature.*

xxx xxx xxx xxx

17. *Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.*

18.(IV) The Respondent Employer is directed to initiate a fair and transparent process for *regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms."*

4.8. Placing reliance on the decision in the case of ***Jaggo and Shripal***, Hon'ble Apex Court in the case of ***Dharam Singh,*** in Paragraph-13, 14, 15 & 17, 18, 19 & 20 has held as follows:

"13. *As we have observed in both* ***Jaggo (Supra) and Shripal (Supra)****, outsourcing cannot become a convenient shield to perpetuate precariousness and to sidestep fair engagement practices where the work is inherently perennial. The Commission's further contention that the appellants are not "full-time" employees but continue only by virtue of interim orders also does not advance their case. That interim protection was granted precisely because of the long history of engagement and the pendency of the challenge to the State's refusals. It neither creates rights that did not exist nor erases entitlements that may arise upon a proper adjudication of the legality of those refusals.*

14. *The learned Single Judge of the High Court also declined relief on the footing that the petitioners had not specifically assailed the subsequent decision dated 25.11.2003. However, that view overlooks that the writ petition squarely challenged the 11.11.1999 refusal as the High Court itself directed a fresh decision during pendency, and the later rejection was placed on record by the respondents. In such circumstances, we believe that the High Court was obliged to examine the legality of the State's stance in refusing sanction, whether in 1999 or upon reconsideration in 2003, rather than dispose of the matter on a mere technicality. The Division Bench of the High Court compounded the error by affirming the dismissal without engaging with the principal challenge or the intervening material. The approach of both the Courts, in reducing the dispute to a mechanical enquiry about "rules" and "vacancy" while ignoring the core question of arbitrariness in the State's refusal to sanction posts despite perennial need and long service, cannot be sustained.*

15. *Therefore, in view of the foregoing observations, the impugned order of the High Court cannot be sustained. The State's refusals dated 11.11.1999 and 25.11.2003,in so far as they concern the Commission's proposals for sanction/creation of Class-III/Class-IV posts to address perennial ministerial/attendant work, are held unsustainable and stand quashed.*

xxx xxx xxx

17. *Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.*

18. *Moreover, it must necessarily be noted that "ad-hocism" thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If "constraint" is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is an institutional discipline that should inform every decision affecting those who keep public offices running.*

19. *Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the material indicating vacancies and comparator regularisations, we issue the following directions:*

i. *Regularization and creation of Supernumerary posts: All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.*

ii. *Financial consequences and arrears: Each appellant shall be paid as arrears the full difference between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization /retirement/death, as the case may be. Amounts already paid under previous interim directions shall be so adjusted. The net arrears shall be released within three months and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.*

iii. *Retired appellants: Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgment.*

iv. *Deceased appellants: In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the arrears under clause (ii) up to the date of death, together with all terminal/retiral dues recalculated consistently with clause (i), within three months of this Judgement.*

v. *Compliance affidavit: The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary of the U.P. Education Services Selection Commission or the prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgement.*

20. *We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling "reconsiderations," and administrative drift which further prolongs the insecurity for those*

who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance .As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India."

4.9. It is contended that in the recent decision of the Hon'ble Apex Court in the case of ***Bhola Nath*** so cited (supra), Hon'ble Apex Court in Para-13.5 to 14 of the judgment has held as follows:-

"13.5. *Such a decision must necessarily be a conscious and reasoned one. An employee who has satisfactorily discharged his duties over several years and has been granted repeated extensions cannot, overnight, be treated as surplus or undesirable. We are unable to accept the justification advanced by the respondents as the obligation of the State, as a model employer, extends to fair treatment of its employees irrespective of whether their engagement is contractual or regular.*

13.6. *This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of "part-time", "contractual" or "temporary" in perpetuity and thereby exploiting them by not regularizing their positions. In* ***Jaggo v. Union of India****, this Court underscored that government departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization.*

13.7. *In* ***Shripal v. Nagar Nigam****, and* ***Vinod Kumar v. Union of India****, this Court cautioned against a mechanical and blind reliance on* ***Umadevi*** *(supra) to deny regularization to temporary employees in the absence of statutory rules. It was held that* ***Umadevi*** *(supra) cannot be employed as a shield to legitimise exploitative engagements continued for years without undertaking regular recruitment. The Court further clarified that Umadevi itself draws a distinction between appointments that are "illegal" and those that are merely "irregular", the latter being amenable to regularization upon fulfilment of the prescribed conditions.*

13.8. *In* ***Dharam Singh v. State of U.P****., this Court strongly deprecated the culture of "ad-hocism" adopted by States in their capacity as employers. The Court criticised the practice of outsourcing or informalizing recruitment as a means to evade regular employment obligations, observing that such measures perpetuate precarious working conditions while circumventing fair and lawful engagement practices.*

13.9. *The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are* *guided by fairness and reason.*

13.10. *In the aforesaid backdrop, we are unable to persuade ourselves to accept the respondent-State's contention that the mere contractual nomenclature of the appellants' engagement denudes them of constitutional protection. The State, having availed of the appellants' services on sanctioned posts for over a decade pursuant to a due process of selection and having consistently acknowledged their satisfactory performance, cannot, in the absence of cogent reasons or a speaking decision, abruptly discontinue such engagement by taking refuge behind formal contractual clauses. Such action is manifestly arbitrary, inconsistent with the obligation of the State to act as a model employer, and fails to withstand scrutiny under Article 14 of the Constitution.*

FINAL CONCLUSION:

14. *In light of our discussion, in the foregoing paragraphs, we summarize our conclusions as follows:*

I. The respondent-State was not justified in continuing the appellants on sanctioned vacant posts for over a decade under the nomenclature of contractual engagement and thereafter denying them consideration for regularization.

II. Abrupt discontinuance of such long-standing engagement solely on the basis of contractual nomenclature, without either recording cogent reasons or passing a speaking order, is manifestly arbitrary and violative of Article 14 of the Constitution.

III. Contractual stipulations purporting to bar claims for regularization cannot override constitutional guarantees. Acceptance of contractual terms does not amount to waiver of fundamental rights, and contractual stipulations cannot immunize arbitrary State action from constitutional scrutiny.

IV. The State, as a model employer, cannot rely on contractual labels or mechanical application of ***Umadevi*** *(supra) to justify prolonged ad-hocism or to discard long-serving employees in a manner inconsistent with fairness, dignity and constitutional governance.*

V. In view of the foregoing discussion, we direct the respondent-State to forthwith regularize the services of all the appellants against the sanctioned posts to which they were initially appointed. The appellants shall be entitled to all consequential service benefits accruing from the date of this judgment."

4.10. Hon'ble Apex Court in Para 73 to 79 of the decision in the case of ***Sukhendu Bhatacharjee*** has held as follows:-

73. *As regards the contention of Shri Gupta that after the decision in Umadevi (supra) no regularization can be effected in respect of employees who were not appointed against duly sanctioned posts, we are unable to accept such a sweeping proposition in the facts of the present case. The submission proceeds on the premise that Umadevi (supra) lays down an absolute and inflexible embargo against all forms of regularization irrespective of the surrounding circumstances. Such an interpretation, in our considered view, does not reflect the true scope and ratio of the decision.*

74. *This Court in Jaggo (supra), deprecated the tendency of the State to take mechanical shelter under Umadevi (supra) to deny relief to employees who had been performing work of a permanent and essential nature for long years. This Court observed as follows: -*

"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.*

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 India, 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 theregular employee over a considerable period in the capacity of the regular employee.*

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.*

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 regularemployees 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 onetime 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 theprinciples 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."*

75. *Recently, this Court in Bhola Nath (supra) while relying on the judgment of Jaggo (supra), Shripal (supra), and Dharam Singh (supra) observed as follows:-*

"13.6. *This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of "part-time", "contractual" or* *"temporary" in perpetuity and thereby exploiting them by not regularizing their positions. In Jaggo v. Union of India, this Court underscored that government departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization.*

13.7 *In Shripal v. Nagar Nigam, and Vinod Kumar v. Union of India, this Court cautioned against a mechanical and blind reliance on Umadevi (supra) to deny regularization to temporary employees in the absence of statutory rules. It was held that Umadevi (supra) cannot be employed as a shield to legitimise exploitative engagements continued for years without undertaking regular recruitment. The Court further clarified that Umadevi itself draws adistinction between appointments that are "illegal" and those that are merely "irregular", the latter being amenable to regularization upon fulfilment of the prescribed conditions.*

13.8. *In Dharam Singh v. State of U.P., this Court strongly deprecated the culture of "adhocism" adopted by States in their capacity as employers. The Court criticised the practice of outsourcing or informalizing recruitment as a means to evade regular employment obligations, observing that such measures perpetuate precarious working conditions while circumventing fair and lawful engagement practices.*

13.9. *The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason."*

76. *What emerges from the principles enunciated in the aforesaid decisions is that the State cannot rely upon the mere form of engagement to deny fair and equitable treatment to employees who have served it for long years. The consistent thread runningthrough these judgments is that Umadevi (supra) cannot be invoked as a blanket barrier to justify prolonged and continued engagements of a temporary or ad hoc nature, especially where the employees have been discharging essential and recurring functions of the State. The Court has repeatedly emphasised that the distinction between "illegal" and "irregular" appointments must be kept in view, that long and continuous service is a relevant consideration, and that the State, as a model employer, is under a constitutional obligation to act with fairness, consistency and reasonableness. The practice of retaining employees for decades under deceptively titled designations, while simultaneously extracting regular work integral to the administration, has been disapproved consistently.*

77. *Applying these principles to the present case, it is evident that engaging workers on muster rolls was a consistently employed policy of the State which continued for prolonged period of time. The appellants were not engaged for sporadic or seasonal purposes but were taken on muster rolls and have rendered continuous service for decades in departments performing regular governmentalfunctions. The State itself acknowledged the magnitude of the issue and framed a Cabinet policy to regularize similarly situated workers, acting upon it in respect of nearly 30,000 employees. In such circumstances, to deny consideration to the fraction of remaining eligible workers including the appellants, by taking shelter under a rigid reading of Umadevi (supra) would defeat the very principles of fairness and non-arbitrariness that this Court has consistently upheld.*

78. *In the aforesaid backdrop, we are unable to accept the contention of the State that*

the appellants cannot be granted regularization on the ground that they were not initially appointed against duly sanctioned posts. The State, having engaged the appellants prior to 1st April, 1993, utilised their services continuously for decades, and having itself framed and implemented a Cabinet policy regularizing nearly 30,000 similarly situated workers, cannot now exclude the appellants by taking shelter behind a rigid or technical reading of Umadevi (supra). In absence of any cogent distinction or reasoned decision justifying such exclusion, the action of the State is manifestlyarbitrary. It is inconsistent with its obligation to function as a model employer and does not withstand scrutiny under Article 14 of the Constitution.

79. *In view of the discussion made hereinabove, the impugned judgment dated 8th June, 2017 passed by the Division Bench cannot be sustained and is set aside and the judgment of the learned Single Judge dated 20th December, 2013 is affirmed. Consequently, we pass the following directions:-*

I. The appellants shall be treated as regularised in service in terms of the Cabinet decision dated 22nd July, 2005 and from the date on which similarly placed 30,000 employees were given benefit of the said Cabinet decision.

II. The State of Assam shall identify and verify the eligible appellants and, where necessary, create supernumerary posts to facilitate their regularization.

III. Upon regularization, the appellants shall be entitled to all consequential benefits, including fixation of pay in the regular scale, continuity of service, and all applicable pensionary and postretiral benefits in the same terms, as wereextended to similarly situated 30,000 employees.

IV. In case of retired appellants, they shall be granted notional regularization with consequential monetary benefits and arrears from the relevant date until their superannuation for the purpose of recalculating pension, gratuity, and terminal dues.

V. In case of deceased appellants, arrears and other benefits shall be released to their legal heirs in accordance with law.

VI. The entire exercise, including the calculation and payment of all financial arrears, shall be completed within a period of one year from the date of this judgment.

VII. We make it clear that the benefit of the above directions shall only be applicable to the appellants who were working in the departments of the State before the cut-off date prescribed in Cabinet decision dated 22nd July, 2005 i.e. before 1st April, 1993.”

4.11. Reliance was also placed on a decision of this Court in W.P.(C) No.7989 of 2022 ***(Prasana Kumar Sahoo vs. State of Odisha & Ors).*** This Court in Para-6.2 of the judgment has held as follows:-

“6.2. *Even though while providing such appointment on adhoc basis, consent of the concerned department was not taken, it is the view of this Court that since petitioner was appointed against a sanctioned vacant post of S.T., so sanctioned vide letter dated 20.01.1992, under Annexure-3 and continued as such till he was regularized vide order dated 13.11.2015 but w.e.f. 17.09.2013, it cannot be said that petitioner's claim is not covered under the Rules, 1992 and Rules, 1938”*

4.12. It is accordingly contended that since Petitioner continued as against a vacant post of Peon w.e.f. 05.02.1994 till 30.04.2022 with order of regularization issued on 21.05.2016 under Annexure-2, necessary direction be issued to extend the benefit of pension from the date of his retirement as due and admissible, with quashing of the impugned order dtd.09.06.2022 under Annexure-4.

5. Learned Addl. Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit so filed.

5.1. It is contended that since Petitioner continued on ad hoc basis after being appointed as per order dtd.05.02.1994 under Annexure-1, and there is break of one day service on completion of each 44 days and he was regularized vide order dtd.21.05.2016 under Annexure-2, it cannot be held that Petitioner continued without any break in engagement, till he was regularized vide order dtd.21.05.2016.

5.2. It is also contended that since Petitioner was regularized vide order dtd.21.05.2016 under Annexure-2 as against the post of Peon, his claim comes under the NPS so made applicable with amendment of the OCS (Pension) Rules, 1992 so notified on 19th May, 2025, making it effective w.e.f. 01.01.2005.

5.3. It is also contended that Petitioner's claim is not covered as per the decision rendered by this Court in the case of ***Parikhita Mallick & Another vs. Utkal University and Ors***. (OJC No.13005 of 1999) so relied on by the Petitioner.

5.4. Making all the submissions, it is contended that since Petitioner was allowed to continue on ad hoc basis with one day break in service, till he was regularized vide order dtd.21.05.2016, his claim is covered under the NPS (New Structure Define Contribution Pension Scheme) and Petitioner is not eligible and entitled to get the benefit of pension under the OCS (Pension) Rules, 1992.

6. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that Petitioner was appointed as against the post of Peon on ad hoc basis as against the vacancy arose due to promotion of the incumbent Peon to the post of Duftary vide order dtd.05.02.1994 under Annexure-1. It is not disputed that Petitioner on being so appointed on ad-hoc basis vide order dtd.05.02.1994, was allowed to continue, though with one day break on completion of each 44 days, till he was regularized vide order dtd.21.05.2016 under Annexure-2.

6.1. Petitioner continued in the regular establishment, till he attained the age of superannuation on 30.04.2022. In view of the decision rendered by this Court in W.A. No.1445 of 2024 so cited (supra), the ground taken in the impugned order that Petitioner's engagement being after 12.4.1993 he cannot be regularized and not eligible to get the benefit of pension is not acceptable to this Court.

6.2. Similarly, placing reliance on the decision in the case of ***Jaggo Shripal, Dharam Singh, Bhola Nath & Sukhendu Bhatacharjee & Ors.*** so cited (supra), it is the view of this Court that since Petitioner continued as against the vacant post of Peon w.e.f. 05.02.1994 till he attained the age of superannuation on 30.04.2022, though after being regularized vide order dtd.21.05.2016, Petitioner is eligible and entitled to get the benefit of pension under OCS (Pension) Rules, 1992.

6.3. Therefore, this Court while quashing the impugned order dtd.09.06.2022 so far as rejection of the Petitioner’s claim to get the benefit of pension under OCS (Pension) Rules, 1992 is concerned, directs Opposite Party No.1 to extend the benefit of pension in favour of the Petitioner as due and admissible under the OCS (Pension) Rules, 1992, from the date of his retirement. This Court directs Opposite Party No.1 to comply with the aforesaid direction within a period of three (3) months from the date of receipt of this order.

7. Accordingly, the Writ Petition stands disposed of.