
(2025) 06 JH CK 0916
In the Jharkhand High Court
Case No : L.P.A. No.176 Of 2023

Moti Ram (Age about 41 years) S/o Late Arjun Ram	APPELLANT
Vs	
State Of Jharkhand	RESPONDENT

Date of Decision : 17-06-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 162, 226

Citation : (2025) 06 JH CK 0916

Hon'ble Judges : Sujit Narayan Prasad, J;Rajesh Kumar, J

Bench : Division Bench

Advocate : Amit Kumar Verma, Indranil Bhaduri, Arbind Kumar

Final Decision : Allowed

Judgement

Sujit Narayan Prasad, J.

Prayer

1. The instant appeal under Clause 10 of the Letters Patent is directed against the order/judgment dated 07.02.2023 passed by learned Single Judge of this Court in W.P.(S) No.4535 of 2022 whereby and whereunder the prayer sought for regularization in the service has been refused to be granted by dismissing the writ petition.

Further, the learned Single Judge, before parting with the order, has observed that the status of the petitioner will remain as casual part time daily wager, who will get his wages as per the Minimum Wages Act. The aforesaid order will not mean that there is any order to remove the petitioner. If his services are necessary, he will continue as daily wager.

Factual Matrix

2. The brief facts of the case which are required to be enumerated read hereunder as :-

The petitioner/appellant was appointed as "Mali" on daily wages from June 2001 in the office of respondents and is continuously working with the satisfaction of the respondent authorities without inviting any complaint from any corner.

3. On 25.6.2022, the Committee has taken decision that the petitioner/appellant had been working as a contingent labour and was getting Rs. 55/- per day which was sanctioned by the Committee and also requested the Secretary to pay him minimum wages.

4. The Secretary, Agriculture Marketing Committee, Deoghar informed by letter No. 78 dated 06.09.2002 to the Labour Superintendent, Deoghar that contingent labour's minimum wages has been fixed by the Government on per day basis and also requested to furnish the minimum wages so that this office can also make payment as per minimum wages.

5. It is the case of the petitioner/appellant that in the premises of Marketing Board, Administrative Building nearby Garden where 10 mango trees were planted and for its irrigation and other gardening work, the petitioner/appellant work has been taken from June 2001 on daily wages @ Rs. 51/- per day as a contingent labour and as such he got Rs. 1292/- in the month of October 2002.

6. It is the further case of the petitioner/appellant that it is evident from Memo No. 625 dt. 15.5.2010 issued by the Secretary, Agriculture Produce Market Committee, Deoghar that the Appellant has been working since June 2001 on daily wages and getting Rs. 99/- per day for 26 working days in a month.

7. Further, one letter was issued by the Deputy Commissioner, Deoghar vide Letter No. 120 dated 20.3.2015 wherein it was directed to pay Rs.7953/- to the daily wage employees.

8. In view of the aforesaid letter, the petitioner made representation before the Sub-Divisional Officer-cum-Chairman, Agriculture Produce Market, Deoghar, on 01.12.2016 and requested that the petitioner is getting only Rs.4,346/- per month and he is facing lot of economic distress, therefore, in view of the direction of Deputy Commissioner, Deoghar, as issued vide Memo No. 120 dated 20.03.2015, his wages shall also be enhanced to Rs.7,953/- per month from Rs.4,346/- per month.

9. It is the further case of the petitioner that he received one letter from the office of the Deputy Commissioner (Establishment), Deoghar vide Memo No. 57 dated 25.01.2020, wherein it has been stated that the employees who have been engaged against the sanctioned post in the State Government and are working continuously for the last ten years, their services are sought to be regularized and for that certain documents were directed to be submitted in the office.

10. In pursuance to the aforesaid letter, the petitioner made detailed representation before the respondent no.2 on 20.06.2022 annexing the relevant documents for kind consideration for regularization of his services.

11. When no decision was taken on his representation for regularization of his services, he filed writ petition before this Court being W.P.(S) No.4535 of 2022 praying therein for a direction to regularize him in service.

12. The aforesaid writ petition was dismissed on 07.02.2023 against which the present appeal has been preferred.

13. It is evident from the factual aspect that the writ petitioner was working since June, 2001 as Gardener as was recorded in the Resolution of the Director, Marketing Committee dated 25.06.2002. The said fact is also further apparent from the Memo No.625 dated 15.05.2010 issued by the Secretary of the concerned Agriculture Produce Marketing Committee, Deoghar.

14. The petitioner, on the aforesaid ground of long continuation in service, has sought for a direction for regularizing him in service. The grievance when has not been redressed, then the writ petitioner has preferred writ petition being W.P.(S) No.4535 of 2022 seeking the aforesaid direction of regularization in service on the ground of continuous service of more than the period of 10 years, rather, the service rendered by him as on the date is even more than 24 years and still he is discharging his duty as Gardener.

15. The respondent committee has appeared and filed counter affidavit making opposition of such prayer on the ground that there is no post of Gardener and the petitioner was working as part time daily wage worker, employed only 26 days in a month.

16. Learned Single Judge after appreciating the rival submissions made on behalf of the parties and relying upon the judgment passed by the Hon'ble Apex Court in the case of State of M.P. v. Lalit Kumar Verma reported in (2007) 1 SCC 575, State of Rajasthan v. Daya Lal reported in (2011) 2 SCC 429 as also the judgment rendered by a Constitution Bench of Hon'ble Apex Court in the case of Secretary, State of Karnataka & Others v. Uma Devi (3) and Others, (2006) 4 SCC 1, has dismissed the writ petition on the ground that the petitioner was appointed only as a contingent worker and was allowed to work only for 20 – 26 days in a month.

17. Further reason has been assigned that the petitioner was never appointed on regular sanctioned post or any vacancy to the sanctioned post ever existed.

18. The said order is under challenge in the instant appeal.

Submission of the learned counsel appearing for the writ petitioner/appellant:

19. Mr. Amit Kumar Verma, learned counsel appearing for the appellant, has taken the following grounds in assailing the impugned order/judgment :-

(i) The learned Single Judge has not appreciated the fact that the writ petitioner was working since the month of June, 2001 and still continuing in service which itself means and suggests that the post on which the writ petitioner is working is perennial in nature but even then no efforts have been taken to regularize him in

service but the learned Single Judge has not appreciated the aforesaid fact, rather, the learned Single Judge, mainly has gone into the fact about the post having not been sanctioned.

(ii) It has been submitted that irrespective of the post having been sanctioned, if the writ petitioner is working since last more than 24 years, the same itself is a ground for regularizing the service. Merely on the ground that the post has not been sanctioned, the claim of the petitioner for regularizing him in service cannot be negated.

(iii) It has been submitted that the learned Single Judge has also not appreciated the proposition laid down in the recent judgment passed by Hon'ble Apex Court in the case of Shripal & Another v. Nagar Nigam, Ghaziabad reported in 2025 SCC OnLine SC 221 and Jaggo v. Union of India and Others reported in 2024 SCC OnLine SC 3826.

(iv) The learned Single Judge has also not appreciated the fact that in the case of The State of Jharkhand & Others v. Md. Ahsanullah Khan [L.P.A. No.529 of 2019] where the post was not stated to be sanctioned by the State wherein also he was continuing in service for last 26 years against the post said to be not sanctioned, but this Court has passed order of regularization. The aforesaid order has been refused to be interfered with by the Hon'ble Apex Court by dismissing the Special Leave to Appeal (C) No.9318 of 2022 which was dismissed on 20.05.2022.

(v) The further ground has been taken by making reference of the last paragraph of the order impugned wherein the learned Single Judge has not directed for regularization of the service of the petitioner, rather, has directed to keep the status of the writ petitioner to be of daily rated employee and with a further direction of not removing him from service which means that the status of the writ petitioner will always be a daily rated employee which will be contrary to the principle laid down by Hon'ble Apex Court in the case of Secretary, State of Karnataka v. Umadevi (3) (Supra) wherein it has been laid down at paragraph 53 that as a one-time measure the State Governments and their instrumentalities should take steps to regularise 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, meaning thereby, if the service is not required, the daily rated employee will be thrown out. But, herein, by issuance of direction for keeping the status of the writ petitioner to be a casual worker for ever is in the teeth of the said proposition of law.

(vi) To buttress his arguments, learned counsel appearing for the appellant has relied upon the judgments passed in Jaggo v. Union of India and Others reported in 2024 SCC OnLine SC 3826, Shripal & Another v. Nagar Nigam, Ghaziabad reported in 2025 SCC OnLine SC 221 and The State of Jharkhand & Others v. Md. Ahsanullah Khan [L.P.A. No.529 of 2019].

20. Learned counsel appearing for the writ petitioner/appellant, based upon the aforesaid ground, has submitted that the order/judgment passed by the learned

Single Judge, therefore, needs interference.

Submission made by learned counsel appearing for the Jharkhand State Agriculture Marketing Committee

21. Per contra, Mr. Arbind Kumar, learned counsel appearing for the Jharkhand State Agriculture Marketing Committee, has taken the following grounds in defending the impugned judgment: -

(i) The order passed by the learned Single Judge is solely on the premise that the post was not sanctioned against which the writ petitioner is working.

(ii) The post since has not been sanctioned, then irrespective of the period rendered as service, the petitioner cannot claim for regularization as his legitimate right.

(iii) The learned Single Judge has also appreciated that the petitioner since was appointed for 20 – 26 days in a month as a contingent worker and, as such, he has got no right to claim regularization even in view of the judgment passed by the Hon'ble Apex Court in the case of Secretary, State of Karnataka v. Umadevi (3) (Supra) upon which reliance has been placed by the learned Single Judge.

(iv) Learned counsel appearing for the respondents has relied upon the judgments passed in Union of India & Others v. Ilmo Devi & Another reported in AIR 2021 SC 4855, State of Rajasthan and Others v. Daya Lal and Others reported in (2011) 2 SCC 429 and Vibhuti Shankar Pandey v. The State of Madhya Pradesh & Others passed in S.L.P.(C) No.10519 of 2020 to buttress his arguments.

22. Learned counsel, based upon the aforesaid grounds, has submitted that the impugned judgment, therefore, needs no interference.

Analysis

23. We have heard learned counsel for the parties, gone through the finding recorded by the learned Single Judge in the impugned order as also the fact available in the record having been considered by the learned Single Judge while passing the impugned order.

24. The core question which requires consideration is:-

(i) Whether the conduct of the State i.e., the respondent Committee herein, will be said to be justified in continuing with the services of the writ petitioner for a period more than 24 years as daily rated worker?

(ii) Whether due to the aforesaid conduct of the respondent Committee, the nature of work which the writ petitioner is performing, is not considered to be the work perennial in nature and in that view of the matter, the writ petitioner has got right to regularization or not?

25. Both the issues since are interlinked, they are being taken up together for its

consideration. But, before considering the aforesaid issues, the law which is prevalent as on the date needs to be referred herein.

26. The reference of the judgment passed by Hon'ble Apex Court in the case of Secretary, State of Karnataka v. Umadevi (3) (Supra) needs to be referred herein along with its background as to why such proposition has been laid down by Hon'ble Apex Court, as would be evident from paragraph 7 to 10 and paragraphs 33, 34 and 45 are being referred herein.

7. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed.

8. In Civil Appeals Nos. 3595-612 of 1999 the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the Department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the Department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3-7-1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they had not made out a right either to get wages equal to that of others regularly employed or for regularisation. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this

gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularisation within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 1-7-1984, a situation covered by the decision of this Court in *Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka* [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularisation in their posts.

9. Civil Appeals Nos. 1861-2063 of 2001 reflect the other side of the coin. The appellant association with indefinite number of members approached the High Court with a writ petition under Article 226 of the Constitution challenging the order of the Government directing cancellation of appointments of all casual workers/daily-rated workers made after 1-7-1984 and further seeking a direction for the regularisation of all the daily-wagers engaged by the Government of Karnataka and its local bodies. A learned Single Judge of the High Court disposed of the writ petition by granting permission to the petitioners before him, to approach their employers for absorption and regularisation of their services and also for payment of their salaries on a par with the regular workers, by making appropriate representations within the time fixed therein and directing the employers to consider the cases of the claimants for absorption and regularisation in accordance with the observations made by the Supreme Court in similar cases. The State of Karnataka filed appeals against the decision of the learned Single Judge. A Division Bench of the High Court allowed the appeals. It held that the daily-wage employees, employed or engaged either in government departments or other statutory bodies after 1-7-1984, were not entitled to the benefit of the scheme framed by this Court in *Dharwad District PWD* case [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902 : (1990) 1 SCR 544] referred to earlier. The High Court considered various orders and directions issued by the Government interdicting such engagements or employment and the manner of entry of the various employees. Feeling aggrieved by the dismissal of their claim, the members of the associations have filed these

10. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in *Secy., State of Karnataka v. Umadevi* (1) [(2004) 7 SCC 132 : 2004 SCC (L&S) 935 : (2003) 9 Scale 187] . This Court noticed that in the matter of regularisation of ad hoc employees, there were conflicting decisions by three-Judge Benches of this Court and by two-Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three-Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments

raised by the Additional Solicitor General. ---

33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularisation. The cases directing regularisation have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

34. In *A. Umarani v. Registrar, Coop. Societies* [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] a three-Judge Bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State. The State could not invoke its power under Article 162 of the Constitution to regularise such appointments. This Court also held that regularisation is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or any body or authority governed by a statutory Act or the rules framed thereunder. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularisation.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of

employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

27. It is evident from the aforesaid paragraph that the reason for rendering such judgment by the Hon'ble Apex Court is to put restriction upon the backdoor entry. However, after giving the consideration about illegal entry and bifurcating the recruitment/appointment in two categories i.e., irregular and illegal, parameter has been fixed at para-53, i.e., if the appointment is irregular, the same can be regularized depending upon the condition of more than ten years continuous service without any aid of the order of the court and the appointment being made against the sanctioned post. Such employees to be regularized by the State by taking one time exercise to be completed within six months from the date of judgment passed by the Hon'ble Apex Court in the said case, for ready reference Para-53 is being referred hereunder as :-

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 bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

28. The crux of the proposition laid down by the Hon'ble Apex Court in the case of Secretary, State of Karnataka v. Umadevi (3) (Supra) is that the restriction is to be put on the backdoor entry vis-à-vis the issue of exploitation and unfair level practice has also been taken of that is the reason the State has been directed to do the exercise by way of one time exercise to regularize the services of such employees who are working since last more than 10 years without any aid of an order passed by the court of law so that unfair level practice of exploitation by making payment of only minimum wages be taken care of.

29. In the case of Secretary, State of Karnataka v. Umadevi (3) (Supra) it has also been laid down as would be evident from para 53 that the reference of appointment made against the sanctioned post has also been taken care of. The appointment, if not made against the sanctioned post, then such appointment has been considered to be illegal appointment and the moment such appointment has been found to be illegal, such appointees are to be dispensed with from service immediately.

30. The Hon'ble Apex Court recently in the case of Jaggo v. Union of India and Others (Supra) while dealing with the issue of regularization in a case where the issue of regularization relates to the part time worker who has not been appointed against the sanctioned post, the Hon'ble Apex Court, after taking note of the judgment passed in the case of Secretary, State of Karnataka v. Umadevi (3) (Supra), has been pleased to hold at paragraph 20 that the decision in Secretary, State of Karnataka v. Umadevi (3) (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.

31. The Hon'ble Apex Court, in the said judgment, has also referred the judgment rendered in the case of Vinod Kumar v. Union of India [(2024) 1 SCR 1230], wherein it was 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.

32. The backdrop of the factual aspect as referred in paragraphs 4 & 5 along with paragraphs 20 to 28 are being referred herein:-

"4. The appellants before this Court, being Applicant Nos. 1, 2, 3, and 5 before the Tribunal, were originally engaged by the Central Water Commission² on part-time, ad-hoc terms. Applicant No. 1 was appointed as a Safaiwali in 1993, Applicant No. 2 as a Safaiwali in 1998, and Applicant No. 3 as a Safaiwali in 1999. All three were primarily responsible for cleaning and maintaining the office premises under the CWC. Applicant No. 5, appointed in 2004 as a Khallasi (also discharging duties akin to a Mali/Khallasi), was entrusted with tasks such as gardening, dusting, and other ancillary maintenance work. Throughout their engagement, these individuals performed essential housekeeping and support functions at CWC establishments, including its offices at Faridabad, ensuring daily upkeep and contributing to the smooth functioning of the Commission's administrative operations.

5. Initially, the appellants sought regularization of their services by filing Original Application No. 2211/2015 before the Tribunal. They contended that over the years, their roles and responsibilities had evolved beyond the nominal labels of "part-time" or "contractual" and that they were performing ongoing and core functions integral to the CWC's operations. They relied on applicable government instructions and the principle that long-serving employees, engaged against work of a perennial nature, deserve fair consideration for regularization, provided their appointments were not illegal or clandestine. The Tribunal, by its order dated 17.04.2018, dismissed the appellants' plea. It concluded that the appellants were not engaged on what it considered "regular vacancies," that they had not completed what it termed as sufficient "full-time" service (such as meeting a 240-days per year criterion), and that their case did not attract the principles enabling regularization. Within ten days after the dismissal of the original application, on 17.04.2018, the services of all these individuals were abruptly terminated on 27.10.2018 by the respondent authorities without issuance of any show-cause notice.

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*⁵, it was 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.

28. In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:

- i. The termination orders dated 27.10.2018 are quashed;

ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits.”

33. The reference of the judgment passed by the Coordinate Bench of this Court in L.P.A. No.529 of 2019 [The State of Jharkhand & Others v. Md. Ahsanullah Khan] also needs to be referred herein wherein also as per the decision made by the State in the said case, Md. Ahsanullah Khan was working for the last 26 years but not against the sanctioned post, rather, his appointment was said to be seasonal. This Court, after taking into consideration the long length of service of 26 years, has passed direction for his regularization in service on the consideration of the fact that the identically placed employees have already been regularized in service.

34. The said judgment passed by this Court has been challenged by filing Special Leave to Appeal (C) No.9318 of 2022 but the same was dismissed. The relevant paragraph of the judgment passed in L.P.A. No.529 of 2019 are being referred herein :-

“31. We have gone through the judgment rendered by the learned Single Judge and found therefrom that the consideration has been made with respect to the appointment of three persons out of which two persons, namely, Ram Sewak Mahto and Mithilesh Kumar Tiwary have been appointed on the basis of the order passed by this Court and one Sri Kamleshwar Rana has been appointed on the basis of the assurance of the Legislative Assembly of the State and further consideration has been made that the land of the writ petitioner has been acquired sometime in the year 1986 and his case has been considered but he has not been provided appointment on regular basis rather on temporary basis to which he is still continuing. Taking into consideration this aspect of the matter, if the order has been passed to come out with the advertisement for appointment of writ petitioner by giving priority in age and relaxation by granting weightage in marks the same cannot be said to suffer from any error. It cannot be said to be excess in jurisdiction by issuing a direction upon the State-appellant under Article 226 of the Constitution of India to come out with an advertisement rather according to our considered view, since the Writ Court under Article 226 of the Constitution of India is the Court of equity and if in exceptional circumstances a Writ Court considers it just and proper case by issuing a command upon the State to come out with an advertisement, the same cannot be said to be excess in jurisdiction.

32. Herein also, in the given facts as discusses hereinabove, it is a case of exception in which the land of the writ petitioner has been acquired way back in the year 1986 but he has been offered temporary appointment while other similarly situated persons like Ram Sewak Mahto and Mithilesh Kumar Tiwary have been appointed on the basis of the order passed by this Court by invoking

the jurisdiction of this Court sitting under Article 226 of the Constitution of India and one Sri Kamleshwar Rana has been appointed on the basis of the assurance of Legislative Assembly of the State, this Court cannot be a mute expectator in exercising the power conferred under Article 226 of the Constitution of India.

33. If the writ petitioner has been subjected to hostile discrimination that too without any reason since time and again this Court has passed judicial orders but no reason has been explained for differentiating the case of Ram Sewak Mahto, Sri Kamleshwar Rana and Mithilesh Kumar Tiwary with the case of the writ petitioner.

34. In view thereof, this Court in the entirety of the facts and circumstances, is of the view that the order passed by the learned Single Judge suffers from no infirmity, accordingly, the instant appeal fails and is dismissed."

35. It also needs to refer herein that the judgment passed by the learned Single Judge which is under challenge in the present appeal wherein the writ petition has been dismissed by taking into consideration the fact that the post on which the writ petitioner was working was not sanctioned one.

36. Adverting to the factual aspect of the present case, it is admitted case that the writ petitioner is working since the month of June, 2001 and still discharging his duty as Gardener, meaning thereby, the petitioner is in continuous service and still working for the last 24 years. The question of sanctioned post has been taken into consideration by the learned Single Judge even though the petitioner is working for last about 24 years and still working as Gardener which is perennial in nature and that is the reason the learned Single Judge while refusing to pass order of regularization has protected the services of the writ petitioner in the capacity of daily rated employee.

37. The Hon'ble Apex Court in the case of Jaggo v. Union of India and Others (Supra) and Shripal & Another v. Nagar Nigam, Ghaziabad (Supa) has taken into consideration that merely on the ground of non-availability of sanctioned post and if one or the other employee has been allowed to continue in service fairly for a long period herein more than two decades, then by taking plea of appointment having not been made against sanctioned post will amount to unfair level practice and on the aforesaid premise the direction has been passed for regularization.

38. The case in hand is exactly the same. The nature of work which the writ petitioner is performing is perennial in nature and that is the reason he is being allowed to continue in service even as on today, meaning thereby, his services are required which is perennial in nature.

39. The learned Single Judge has also accepted the aforesaid fact that the work performed by the writ petitioner is perennial in nature and that is the reason status of casual worker has been protected by observing that passing of the order impugned will not construe to dispense with the services of the writ

petitioner.

40. If the last part of the order as referred herein, if will be considered, in absence of the order of regularization, the same, according to our considered view, will be in the teeth of the judgment passed by the Constitution Bench of Hon'ble Apex Court in the case of Secretary, State of Karnataka v. Umadevi (3) (Supra) wherein the basic proposition laid to deal with the unfair level practice by keeping the employees in the daily rated capacity without regularization.

41. We, after taking into consideration the judgment passed by Hon'ble Apex Court in the case of Jaggo v. Union of India and Others (Supra) and Shripal & Another v. Nagar Nigam, Ghaziabad (Supra), are of the view that the order impugned needs interference.

42. Accordingly, the order/judgment dated 07.02.2023 passed in W.P.(S) No.4535 of 2022 is quashed and set aside.

43. The instant appeal stands allowed.

44. In consequence thereof, the writ petition stands allowed.

45. The respondents are, accordingly, directed to immediately and forthwith regularize the service of the appellant/writ petitioner.

46. Pending interlocutory application, if any, also stands disposed of.