

THE HON'BLE SRI JUSTICE BATTU DEVANAND

AND

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION Nos.44902, 31806 & 45705 of 2018

COMMON ORDER: *(Per Hon'ble Sri Justice Battu Devanand)*

Writ Petition No.44902 of 2018 is filed challenging the common order, dated 31.05.2017 in O.A.No.1222 of 2015 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad.

Writ Petition No. 31806 of 2018 is filed challenging the order, dated 20.07.2018 in O.A.No.1431 of 2018 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad.

Writ Petition No. 45705 of 2018 is filed challenging the order, dated 15.11.2018 in O.A.No.2466 of 2018 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad.

As the issue that arises for consideration in all these three cases are inter-related, they are heard and are being disposed of by this Common Order.

2. **Submissions of the writ petitioners:**

(a) The petitioner in O.A.No.1222 of 2015 has rendered his services as a Work Inspector (Non Technical Assistant/ Technical Assistant) over a period of more than twenty (20) years in the Telugu Ganga Project Division, Allagadda, Kurnool District.

(b) The petitioner in O.A.No.1431 of 2018 has worked as a Typist on NMR basis in the Telugu Ganga Project Division No.II, Mamillapalli, Kadapa. He worked from 28.08.1987 to 30.11.1987. Subsequently, his services were terminated and taken back in the year 1990 and since then, he continued in the said post.

(c) The petitioner Nos.1 to 37 in O.A.No.2466 of 2018 are working as Time Scale Employees appointed in the year 1989 in various cadres on different dates as NMRs and are continuing in services.

(d) Learned counsel for the petitioners contended that they are working in various cadres in the respondent establishment and drawing minimum time scale + D.A attached to the regular post as per G.O.Ms.No.79, I & CAD (Ser.V.2), Department, dated 22.05.2009. In spite of putting more than 10, 20 years of service by the petitioners, the respondents have not considered for regularization of the petitioners on the ground that the petitioner have not completed five (05) years of service by the cut off date 25.11.1993. It is further contended that the respondents have regularized the services of similarly situated persons *vide* G.O.Ms.No.26, I & CAD (Ser.V) Department, dated 06.02.2001.

3. **Submissions of the respondents:**

(a) Basing on the counter affidavit, learned counsel for the respondents would submit that the petitioners who were allowed minimum time scale of pay + D.A. as per G.O.Ms.No.79, I&CAD (Ser.V.2) Department,

dated 22.05.2009 are not eligible for regularization of their services, since they have not completed five (05) years of service as on 25.11.1993, in terms of G.O.Ms.No.212 F&P Department, dated 22.04.1994.

(b) Learned counsel for the respondent also submit that the petitioners are not entitled for regularization of their services in view of the A.P. Act 2 of 1994, as the Act prohibits regularization of services of daily wage employees and temporary employees appointed and continuing prior to the commencement of the said act and the same was confirmed by the Apex Court vide orders, dated 06.07.2009 in Civil Appeal No.3702/2006 and batch. The decisions relied by the learned counsel for the petitioners have no application to the facts and circumstances of the present case.

4. The Andhra Pradesh Administrative Tribunal, after hearing both sides, held that the petitioners are not entitled for regularization of their services and accordingly, dismissed the O.As., filed by the petitioners.

5. On hearing the learned counsel appearing on either sides, this Court gave anxious consideration to the submissions made by the respective counsel and carefully examined the material available on record.

6. **Admitted facts:**

(i) Admittedly, the petitioners were initially appointed in the year 1987 and 1989 on different dates as NMRs in various cadres and are continued in services. The petitioners were extended minimum time scale

along with other workers. The claim of the petitioners has not been considered on the ground that they have not completed five years of service as on 25.11.1993 in terms of G.O.Ms.No.212, F&P, dated 22.04.1994. In spite of having number of existing vacancies in the Department, the case of the petitioners has not been considered.

7. The petitioners herein filed O.A.No.1222 of 2015, O.A.No.1431 of 2018 and O.A.No.2466 of 2018 before the Andhra Pradesh Administrative Tribunal at Hyderabad, seeking benefit of regularization of their services and placed reliance on the decisions of the Apex Court in the case of *the Secretary, State of Karnataka and Others Vs. Umadevi and others*¹ and *the State of Karnataka and others Vs. M.L.Kesari and others*² wherein, it is held that the persons who have completed 10 years of service as on 10.04.2006 for regularization of their services, all those persons are entitled for regularization and directed the concerned Departments to regularize their services. The same is also interpreted by this High Court in the case of Kodali Raju and others Vs. APSRTC in W.P.No.24377 of 2007.

8. Further, the petitioners approached the respondents by way of several representations to regularize them in terms of para 53 of the judgment in the case of *the Secretary, State of Karnataka and Others Vs. Umadevi and others*³. But, the Tribunal did not appreciate the judgment rendered by the Apex Court stating that the applicants did not plead and establish that their

¹ 2006 (4) SCC 1

² 2010 9 SCC 247

³ 2006 (4) SCC 1

employment as NMR was against duly sanctioned post and they were working as such in duly sanctioned post for continuous period of ten (10) years, by the date of judgment of the Apex Court. It was held that in the absence of the applicants' appointments as NMR were duly sanctioned post and their working as NMR was in duly sanctioned post, the applicants are not entitled for any benefit under the judgment stated *supra*. The Tribunal further held that the applicants, who were appointed during the period from the year 1989 to 1991 as Man Mazdoor/Work Inspectors have not fulfilled the main and material conditions of having continuous service of five (05) years or more as on 25.11.1993 and, therefore, they are not eligible for regularization in terms of G.O.Ms.No.212, dated 22.04.1994 covered by the first proviso to Section 7 of A.P. Act 2 of 1994 and dismissed the Original Applications.

9. At this juncture, learned counsel for the petitioners has drawn the attention of this Court to the latest judgments of the Apex Court in the case of **Shripal & another vs. Nagar Nigam, Ghaziabad⁴** and **Dharam Singh Vs. State of UP⁵** and would submit that the facts in the present case are squarely covered in the said judgments.

10. The relevant paragraph Nos.11 to 17 of the judgment of the Apex Court in *Shripal* case, are extracted herein under:

11. Furthermore, the Employer's stance that there was never a direct employer-employee relationship is wholly unsubstantiated. If, in fact, the Appellant Workmen had been engaged solely through a contractor, the

⁴ 2025 INSC 144

⁵ 2025 INSC 998

Employer would have necessarily maintained some form of contract documentation, license copies, or invoices substantiating the contractor's role in hiring, paying, and supervising these workers. However, no such documents have been placed on record. Additionally, the Employer has failed to establish that wages were ever paid by any entity other than its own Horticulture Department, which strongly indicates direct control and supervision over the Workmen's day-to-day tasks is a hallmark of an employer-employee relationship. Had there been a legitimate third-party contractor, one would expect to see details such as tender notices, contract agreements, attendance records maintained by the contractor, or testimony from the contractor's representatives. The absence of these crucial elements undermines the Employer's claim of outsourced engagement. In fact, it appears that the Workmen were reporting directly to the Horticulture Department officials, receiving instructions on their duties, and drawing wages issued under the Municipality's authority. This pattern of direct oversight and wage disbursement substantially negates the narrative that they were "contractor's personnel." Consequently, the discontinuation of their services carried out without compliance with statutory obligations pertaining to notice, retrenchment compensation, or approval under Section 6E of the U.P. Industrial Disputes Act, stands on precarious ground. The very foundation of the Employer's defense (i.e., lack of an employer- employee relationship) is not supported by any credible or contemporaneous evidence.

12. The evidence, including documentary material and undisputed facts, reveals that the Appellant Workmen performed duties integral to the Respondent Employer's municipal functions specifically the upkeep of parks, horticultural tasks, and city beautification efforts. Such work is evidently perennial rather than sporadic or project-based. Reliance on a general "ban on fresh recruitment" cannot be used to deny labor protections to long- serving workmen. On the contrary, the acknowledged shortage of Gardeners in the Ghaziabad Nagar Nigam reinforces the notion that these positions are essential and ongoing, not intermittent.

13. By requiring the same tasks (planting, pruning, general upkeep) from the Appellant Workmen as from regular Gardeners but still compensating them inadequately and inconsistently the Respondent Employer has effectively engaged in an unfair labour practice. The principle of “equal pay for equal work,” repeatedly emphasized by this Court, cannot be casually disregarded when workers have served for extended periods in roles resembling those of permanent employees. Long-standing assignments under the Employer’s direct supervision belie any notion that these were mere short-term casual engagements.

14. The Respondent Employer places reliance on Umadevi (supra)² to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, (2006) 4 SCC 1, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor- based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer’s failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfill ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this

junction, it would be appropriate to recall the broader critique of indefinite “temporary” employment practices as done by a recent judgment of this court in **Jaggo v. Union of India**³ in the following paragraphs:

“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.

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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 2024 SCC OnLine SC 3826 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 labelled 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.”

16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness:

the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.

11. The Apex Court, in *Dharam Singh's* case (5 supra) held as extracted herein under:-

"11. Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (supra), to non-suit the appellants is misplaced. Unlike Umadevi (supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the

perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in Jaggo v. Union of India and in Shripal & another v. Nagar Nigam, Ghaziabad have emphatically cautioned that Umadevi (supra) cannot be deployed as a shield to justify exploitation through long-term 'ad hocism', the use of outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case.

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.

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 "constrain" 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 a constitutional discipline that should inform every decision affecting those who keep public offices running.”

12. By following the judgments of the Apex Court in *Shripal & Another v. Nagar Nigam, Ghaziabad, Jaggo v. Union of India*, and *Dharam Singh v. State of Uttar Pradesh*, as stated supra, this Court, while dealing with the case of *Commissioner, Dharmavaram Municipality v. The President, Municipal Engineering Employees Association, Dharmavaram*, considered the case of workmen, who had been continuously discharging their duties for the last 28 years, i.e., nearly three decades, and held that since they were engaged in essential and perennial duties, they could not be relegated to a state of perpetual uncertainty.

13. It is also very apt to refer the observations of the Full Bench of the Madras High Court, while opined that the practice of employing persons on a temporary basis to permanent post is not a healthy practice in the case of ***M. Sivappa Vs. State of Tamil Nadu and Others***⁶ and observed further as herein under:-

“Employment of persons on part-time or a temporary basis to such posts which form part of the Tamil Nadu Basic Service would, in our considered opinion, definitely be an act of exploitation by the State. A welfare State is required to be a model Employer and not an exploiter which indulges in slavery of its own citizens.”

14. The observations and findings of a Division Bench of the Madras High Court in ***M. Shanmugam and Others vs. Government of Tamil Nadu and Others***⁷ at paragraph Nos.20 to 24 are extracted herein under:-

“20. We have come across several cases where such temporary daily wage employees are removed from services and replaced by others depending upon the political situations prevalent at that point of time. Fortunately, for these appellants despite swinging of the political pendulum, they have been continuing to work. Even though their initial service was protected by the order of the Tribunal, at least from 01.12.2010 till date for nearly 12 years, there was no protection for their services by means of any order of Court.

21. The Hon’ble Supreme Court even after the judgment in Umadevi had held that in appropriate cases, it will be open to regularize the services of temporary daily rated employees if it is shown that the nature of the work done by them was permanent and they were served for more than 10 years. This Court has also issued several directions in this regard.

22. No doubt, the exploitation of this daily rated employees by the Government should be stopped. But, at the same time, if we refuse to regularize the persons like the appellants, who have put in 20 years of service as daily rated employees, we would only be encouraging exploitation by the State. If the private individual running an industry with 20 employees cannot have temporary employees and the Tamil Nadu Industrial Employees (Conferment Permanent Status) Act would apply to them, we see no reason to allow those persons, who are working under the State or its wings

⁷ 2023(1)CWC 495

to suffer the temporary employment for a span of 10 years and more.

23. *The learned Government Advocate would submit that if we direct regularization of the appellants that would open the flood gates. We are alive to that fact. The Government is guilty of exploitation of at least these four individuals for more than 22 years now. If their service had been regularized, they would have been entitled to various benefits including increments, Dearness Allowance etc. The Government should be a model employer. We find that the Government has been a worse employer in the case of these four appellants and it had been exploiting them for more than 22 years. Whatever is the difference between the daily wages that has been paid to the appellants and what should have been paid to them if they had been permanent employees would be the illegal gain made by the Government at the cost of these appellants. We should not be misunderstood as being sentimental or emotional, we are only sympathetic. Sympathetic to the cause of such persons, who are exploited by the mighty state.*

24. *We therefore, have no hesitation in setting aside the order of the Writ Court and directing regularization of the appellants with effect from the date on which they completed 10 years in service. We make it clear that the appellants would be entitled to monetary benefits only from the date on which they came before this Court in W.P.No.32112 of 2018 i.e., on 03.12.2018.”*

15. Reasoning and Finding:-

(a) In the present case, the petitioners were initially engaged in the year 1987 and 1989 as NMRs in various cadres. They were extended minimum time scale along with other workers. Their services are not

regularized only on the ground that they have not completed five years of service as on 25.11.1993 in terms of G.O.Ms.No.212 F&P Department, dated 22.04.1994. It is not the case of the respondents that the petitioners were appointed against non-sanctioned posts. Admittedly, there were number of existing vacancies in the respondents Departments. The petitioners are continued more than two decades. If there is no work to extract for them, the respondents are not supposed to continue them to work in their departments for the years together. It appears the respondents without taking steps to fill the sanctioned vacancies on permanent basis by following proper selection procedure, utilized the services of the petitioners for all these years by paying meager remuneration/wages which amounts to nothing but exploitation.

(b) In several cases, this Court is noticing that in various departments of the State Government without filling the sanctioned vacancies by following regular selection procedure, engaging the educated and qualified persons on adhoc/ outsourcing/contract basis by paying meagre remuneration/wages and they are utilizing their services for more than one or two decades. Whenever they sought to regularize their services, the respondents departments are starting raising grounds against them contending that their appointments are not made by following the procedure and they are not appointed against the sanctioned posts. As and when the respondents departments utilizing their services and extracting work for them for more than decades, they are not permitted to contend like that.

(c) It is settled law that as and when the work has been extracted from these petitioners on full time basis, day in and day out, and keeping them as daily rated employees is unfair and opposed to good conscience. These petitioners have accepted such unfair treatment only with a hope that at some point of time their claim for regularization could be considered. Therefore, the petitioners cannot be allowed to languish as daily rated employees for indefinite period and be denied of the regular benefits of the Government employees forever. Such scenario does not show the welfare State in good light. Whenever a class of employees like the petitioners herein face unfair situation of being employed on a daily rate basis, denied of all benefits as that of regular employees, but discharging regular duties, such situation would only rob the State of its constitutional obligation to be reasonable to its citizens and provide adequate livelihood to support the sustenance of these petitioners, in furtherance of Article 21 of the Constitution of India. After all, any policy of the State has to be measured in terms of how the policies treat the weaker sections of the society. When these petitioners are allowed to be exploited by the authorities by paying them some pittance as daily wages and work has been extracted as that of regular employees, the least the State could do in such situation is to consider the claim for regularization at some point of time. Their cry for regularization cannot be hanging fire, without any positive action in sight at the hands of the State. The idea of welfare State is realized only when the citizens are treated fairly, equally and without any exploitation.

(d) It is also one has to keep in mind that after passing all these long period, those persons who are engaged on adhoc/outsourcing/contract basis, may not be in a position to attend for regular selection process due to age bar. The Government being the model employer has to keep all these aspects in their mind, when they are rejecting the request of the petitioners for regularization even after utilizing their services for essential and perennial duties. The present cases are a classic example for illegal and arbitrary actions of the employers.

(e) In the latest judgment of the Apex Court in *Jaggo's case (supra)*, the Apex Court held that it is well established that the decision in *Umadevi's case (supra)* does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary function of the State or its instrumentality. In fact, the decision of the Apex Court in *Umadevi's case (supra)* is to prevent back door entries and illegal appointments only.

16. In view of the foregoing observations and considering the law laid down by the Apex Court in the cases of *Jaggo, Shripal and Dharam Singh (cited supra)*, this Court is of the considered opinion that the Tribunal has failed to consider the case of the petitioners and the impugned orders in O.A.No.1222 of 2015, O.A.No.1431 of 2018 & O.A.No.2466 of 2018 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad, are liable to be set-aside.

17. Accordingly, the Writ Petitions are allowed. The respondents are directed to regularize the services of the petitioners along with consequential benefits, within a period of two (02) months, from the date of receipt of copy of this order. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE BATTU DEVANAND

JUSTICE SUBHENDU SAMANTA

Dated: .03.2026
PKR

**THE HON'BLE SRI JUSTICE BATTU DEVANAND
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