2025 INSC 998

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 8558 OF 2018

DHARAM SINGH & ORS. ...APPELLANT(S)

VERSUS

STATE OF U.P. & ANR. ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. When public institutions depend, day after day, on the same hands to perform permanent tasks, equity demands that those tasks are placed on sanctioned posts, and those workers are treated with fairness and dignity. The controversy before us is not about rewarding irregular employment. It is about whether years of ad hoc engagement, defended by shifting excuses and pleas of financial strain, can be used to deny the rights of those who have kept public institutions running. We resolve it by insisting that public employment should be organised with fairness,

reasoned decision making, and respect for the dignity of work.

2. The present appeal arises from the judgment and order dated 08.02.2017 passed by the Division Bench of the High Court of Judicature at Allahabad in Special Appeal No. 1245 of 2009, whereby the Special Appeal preferred by the present appellants against the dismissal of Writ Petition No. 3162 of 2000 was rejected.

3. By the impugned order, the Division Bench of the High Court affirmed the dismissal of the writ petition on the premise that the appellants were engaged on daily-wage basis and that there were no rules in the U.P. Higher Education Services Commission[1] (Respondent No.2 herein) for regularization. Moreover, the Court observed that no vacancies existed against which the appellants could be considered.

4. The factual backdrop to the present appeal is as follows:

4.1. The appellants were engaged by the Commission between 1989 and 1992. Appellant Nos. 1 to 5 served as Class-IV employees (Peon/attendant duties), and

1 In short, "the Commission"

Appellant No. 6 served as Driver (Class-III). They were paid as daily wagers and, with effect from 08.04.1997, received consolidated monthly amounts (₹1,500 for Class-IV; ₹2,000 for Driver), while discharging ministerial and support functions during regular office hours. The Commission, established under the U.P. Higher Education Services Commission Act, 1980, processes large recruitment cycles for teachers and principals and requires ministerial support for scrutiny of applications, dispatch, and connected administrative work.

4.2. On 24.10.1991, the Commission resolved to create fourteen posts in Class-III and Class-IV and sought sanction from the State Government[2]. On 27.12.1997, the State sought particulars of daily-wage hands and their service details. On 11.02.1998, the Commission furnished a list of fourteen daily wagers which included the present appellants.

4.3. On 16.10.1999, the Commission reiterated its request, seeking sanction of two posts of Driver and ten posts for Peon/Mali/Chowkidar, adverted to administrative exigencies, and referred to earlier correspondence. By

2 In short, "the State"

letter dated 11.11.1999, the State rejected the proposal citing financial constraints.

4.4. Aggrieved, the appellants instituted Writ Petition No. 3162 of 2000 before the High Court praying for

(i) Quashing of the State's order dated 11.11.1999;

(ii) A mandamus to the State to sanction/create fourteen posts in Class-III/IV for the Commission in terms of the Commission's resolution and proposals and, thereafter, to regularise the appellants against those posts with regular pay; and

(iii) Consequential non-interference and salary directions.

4.5. On 24.04.2002, the High Court directed the Commission to send a fresh recommendation for sanction of appropriate Group-C/Group-D posts and directed the State to take a fresh decision thereon. In the meantime, having regard to the appellants' long engagement, the Commission was directed to pay them the minimum of the applicable pay scale.

4.6. Pursuant thereto, a fresh recommendation was sent and by communication dated 25.11.2003, the State declined sanction, again citing financial grounds and a ban on creation of new posts.

4.7. By judgment dated 19.05.2009, the learned Single Judge of the High Court dismissed the writ petition, holding that no rules for regularisation in the Commission had been shown and that even assuming the 1998 Regularisation Rules applied, there were no vacancies for the appellants. Moreover, the Single Judge held that regularisation was impermissible in view of the law declared in ***Secretary, State of Karnataka & Others. vs. Umadevi & Others***[3] and allied precedents. It was also observed that the petitioners (appellants herein) had not specifically assailed the subsequent decision dated 25.11.2003.

4.8. The appellants preferred Special Appeal No. 1245 of 2009. By the impugned judgment, the Division Bench of the High Court affirmed the dismissal, observing that the appellants were daily wagers, that there were no rules for regularisation in the Commission and that no vacancy existed for considering them.

5. Aggrieved by the order of the Division Bench of the High Court, the appellants have approached this Court in the present appeal.

6. The question before us is whether the High Court erred in failing to adjudicate the appellants' principal

3 (2006) 4 SCC 1.

challenge to the State's refusals to sanction posts and treating the matter as a mere plea for regularization, and, if so, given the appellants' long and undisputed service, what appropriate relief ought to follow from this Court.

7. Having heard the learned counsel for the parties and perused the record, we are unable to endorse the approach adopted by the High Court. The original writ petition before the High Court expressly assailed the State's refusal dated 11.11.1999 to sanction posts for the Commission and sought a mandamus for creation of posts with consequential consideration for the appellants. The Single Judge of the High Court, and the Division Bench of the High Court in appeal, treated the matter as a bare plea for regularisation, answered it only on the touchstone of absence of rules and vacancy, and rested principally on ***Umadevi*** **(Supra)**. In doing so, the Courts below failed to adjudicate the principal challenge to the State's refusal and the legality of its reasons. In our opinion, such non-consideration amounts to a misdirection and, in effect, a failure to exercise jurisdiction.

8. The State's refusal of 11.11.1999 cites "financial constraints" and the subsequent decision of

25.11.2003 (taken after the High Court's direction to reconsider) adverts to financial crisis and a ban on creation of posts. Neither decision engages with relevant considerations placed on record, namely, the Commission's 1991 resolution and repeated proposals, the acknowledged administrative exigencies of a recruiting body handling large cycles, the continuous deployment of these very hands for years, and the existence of attendant work that is primarily perennial rather than sporadic. While creation of posts is primarily an executive function, the refusal to sanction posts cannot be immune from judicial scrutiny for arbitrariness. We believe that a non-speaking rejection on a generic plea of "financial constraints", ignoring functional necessity and the employer's own long-standing reliance on daily wagers to discharge regular duties, does not meet the standard of reasonableness expected of a model public institution.

9. Moreover, it is undisputed that the nature of work performed by the appellants, i.e. sorting and scrutiny of applications, dispatch and office support, and driving, has been continuous and integral to the Commission's functioning since their engagement between 1989 and 1992. The Commission itself moved

for sanction of fourteen posts and furnished a list of fourteen daily wagers including the appellants. That consistent internal demand, coupled with uninterrupted utilisation of the appellants' labour on regular office hours, fortifies the conclusion that the duties are perennial. To continue extracting such work for decades while pleading want of sanctioned strength is a position that cannot be sustained.

10. It must be noted that the premise of "no vacancy" is, in any event, contradicted by the evidence on record. An RTI response of 22.01.2010 received from the office of Respondent No.2 indicated existence of Class-IV vacancies. Furthermore, I.A. No. 109487 of 2020 filed before this Court by the appellants specifically pointed to at least five vacant Class-IV/Guard posts and one vacant Driver post within the establishment. That application also set out the names of similarly situated daily wagers who were regularised earlier within the same Commission. No rebuttal was filed to the I.A. The unrebutted assertion of vacancies and the comparison with those who received regularisation materially undermine the High Court's conclusion that no vacancy existed and reveal unequal treatment vis-à-vis persons similarly placed. Selective regularisation in the

same establishment, while continuing the appellants on daily wages despite comparable tenure and duties with those regularized, is a clear violation of equity.

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***[4] and in ***Shripal & Another v. Nagar Nigam, Ghaziabad***[5] 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

4 2024 SCC OnLine SC 3826.
5 2025 SCC OnLine SC 221.

parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from ***Shripal (supra)*** have been reproduced hereunder:

> "***14.*** *The Respondent Employer places reliance on Umadevi (supra)*[2] *to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.*
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> ***15.*** *It is manifest that the Appellant Workmen continuously rendered their services over several*

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

.....

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 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.""*

12. We also note the Commission's affidavit filed in 21.04.2025 pursuant to the order of this Court dated 27.03.2025, wherein reference has been made to a

supervening reorganisation in 2024, whereby the U.P. Higher Education Services Commission was merged into the U.P. Education Services Selection Commission and, by a Government Order of 05.07.2024, certain Group-C posts were sanctioned while Class-IV/Driver requirements were proposed to be met through outsourcing. We must point out however, that supervening structural change cannot extinguish accrued claims or pending proceedings. The successor body steps into the shoes of its predecessor subject to liabilities and obligations arising from the prior regime. More fundamentally, a later policy to outsource Class-IV/Driver functions cannot retrospectively validate earlier arbitrary refusals, nor can it be invoked to deny consideration to workers on whose continuous services the establishment relied for decades.

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.

16. The appeal must, accordingly, be allowed.

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 a constitutional 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 Judgement.

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.

21. No order as to costs.

22. Pending applications, if any, shall stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI
AUGUST 19, 2025