* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 24 July 2026
Judgment pronounced on : 23 November 2026

\# **CNR No: DLHC011591102013**

\+ LPA 943/2013

GURJEET KAUR & ORS .....Appellant
Through: Mr. M. K. Bhardwaj, Adv.

versus

GOVT OF NCT OF DELHI & ORS .....Respondent
Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi, Ms. Manisha, Ms. Vishruti Pandey and Mr. Sachin Garg, Advs.
Mr. Subhash Tanwar, SPC with Mr. Sandeep Mishra, Mr. Harshit Deshwal and Mr. Mohit Kumar Tomar, Advs. for R-5

\+ LPA 937/2013, CM APPL. 14982/2025

JAGJEET KAUR & ORS .....Appellant

Through: Mr. M.K. Bhardwaj, Adv.

versus

GOVT OF NCT OF DELHI & ORS .....Respondent
Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi, Ms. Manisha, Ms. Vishruti Pandey and Mr. Sachin Garg, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

% 23.11.2026

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C. HARI SHANKAR, J.

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A. A Prefatory Comment

1. These appeals once again call on us to revisit the recent development of the law, in a line of judgments rendered by the Supreme Court, on the right of persons who are appointed on contractual or casual basis, and who render unblemished service for long periods of time, to regularization. We had earlier examined the legal position, as developed by the Supreme Court in ***Vinod Kumar v. Union of India***[1]***, Jaggo v. Union of India***[2]***, Shripal v. Nagar Nigam, Ghazibad***[3] *and* ***Dharam Singh v. State of UP***[4]*,* in detail, in our

[1] **(2024) 9 SCC 327**
[2] **2024 SCC OnLine SC 3826**
[3] **2025 SCC OnLine SC 221**
[4] **2025 SCC OnLine SC 1735**

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judgment in ***Pawan Sharma v. GNCTD***[5], which was affirmed on merits by the Supreme Court in appeal. Since then, the legal position stands reiterated by four different Division Benches of the Supreme Court, in ***Bhola Nath v. State of Jharkhand***[6], ***Pawan Kumar v. Union of India***[7], ***Sukhendu Bhattacharjee v. State of Assam***[8] and ***Rupesh R. Gaonkar v. State of Goa***[9], all of which cover the present appeals in favour of the appellants and justify their claim for regularization.

B. Facts

2. These appeals, under Clause X of the Letters Patent as applicable to this Court, assail judgments dated 26 July 2023 in WP (C) 2571/2011 and dated 20 September 2013 in WP (C) 4896/2012, rendered by a learned Single Judge of this Court. The judgment in WP (C) 4896/2012 follows the earlier judgment in WP (C) 2571/2011. The issue in controversy is common.

3. For the sake of convenience, we would refer, in principle, to WP (C) 2571/2011, from which LPA 943 of 2013 emanates.

4. The petitioners were initially appointed by the Punjabi Academy under the Government of National Capital Territory of Delhi[10], as part-time Punjabi Language Teachers in various schools

[5] **(2026) 327 DLT 9789**
[6] **2026 SCC OnLine SC 129**
[7] **2026 SCC OnLine SC 200**
[8] **2026 SCC OnLine SC 909**
[9] **2026 SCC OnLine SC 1495**
[10] "GNCTD" hereinafter

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under the Directorate of Education[11]. Their respective dates of initial appointment were as under:

Sl. No.	Name	Qualification	Date of initial appointment
1.	Gurjeet Kaur	M.A, B.Ed., M.Phil.	07.01.1988
2.	Raminder Kaur	B.A, B.Ed.	04.07.1987
3.	Nirmal Sharma	M.A, B.Ed.	31.03.1994
4.	Parvinder Kaur	M.A, B.Ed.	12.07.1988
5.	Vinod Biyal	MA (Hindi), MA (Punjabi), B.Ed.	29.08.1989
6.	Nanehi	B.A., B.Ed.	19.02.1987
7.	Nirmaljeet Kaur	M.A, B.Ed.	15.02.1990
8.	Jaspreet Kaur	M.A, B.Ed.	16.11.1989
9.	Kiran Sharma	M.A, B.Ed.	18.12.1987
10.	Pardeep Kaur	B.A, B.Ed.	13.11.1986

5. The appointment was styled as a temporary and on *ad hoc* basis, liable to be terminated at any time without notice and without assigning any reason. The letters of appointment further stated that it did not confer on them any right whatsoever for regular appointment in the Punjabi Academy, the GNCTD or any other institution.

6. The services of the petitioners were provided to the DOE, GNCTD by the Punjabi Academy, under a scheme to promote Punjabi as a language to be taught at schools. The Punjabi Academy has been held, in the impugned judgment, to be an instrumentality of the State within the meaning of Article 12 of the Constitution of India. This part of the decision of the learned Single Judge is not under challenge.

[11] "DOE" hereinafter

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7. The appellants' appointment was renewed every year, for a period of one year on each occasion, on identical terms and conditions. In other words, each fresh letter of appointment stated that the appointment was purely temporary and *ad hoc*, liable to be terminated at any time without notice, and that it did not confer on them any right to regularization.

8. The GNCTD, by Cabinet decision No. 1394 dated 17 April 2008 observed, in para 7, as under:

> "7. The demand of part time teachers employed by Academies for 'regularization of their service' was earlier examined by the Department in light of the Recruitment Rules and judgement of various courts in cases of similar Part Time and Contract Teachers. The Department had also obtained the views of the Services and the Law Department. In view of the same the Directorate of Education thereafter, arrived at a decision that Part Time Teachers can at best be treated at par with the Contract Teachers, who have been given the benefit of age relaxation only to appear in the open competitive examination being conducted by DSSSB for the post of TGT/PGT as a very special case in respect of those who fulfil the required qualification as per of Recruitment Rules."

9. After they had served as part-time TGTs (Punjabi) for 20 years or more, the appellants were, by orders passed in 2008, 2010 and 2011, appointed as full time Punjabi Language Teachers in the schools in which they had earlier been appointed on part-time basis. Their salaries were also enhanced. The letters appointing them as full time Punjabi language teachers also stated that the appointment was temporary, on *ad hoc* basis, liable to be terminated at any time without notice and without assigning any reason and that it did not confer, on them, any right to regularization.

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10. As per the averments contained in their writ petitions, the appellants possessed the prescribed minimum qualifications for appointment as TGTs, as they were graduates and, in some cases, post-graduates in Punjabi and also held B. Ed. degrees. This averment was not disputed in the counter affidavits filed by any of the respondents before the learned Single Judge.

11. It was further averred by the appellants that their recruitment by the Punjabi Academy was through a valid recruitment process involving written examination and interview. This averment was also not contested in the counter affidavit filed by the respondents.

12. The impugned judgment of the learned Single Judge records, in para 2, that the appellants were re-deployed against vacant posts of TGT (Punjabi) in different schools under the DOE.

13. On 29 April 1991, the Chief Secretary, Planning Commission, NCTD, wrote to the DOE, requiring the DOE to create regular posts of language teachers and absorb the qualified part-time teachers recruited through the Punjabi Academy. This direction was never implemented.

14. On 24 March 1992, the Commissioner-cum-Secretary (Education), Delhi Administration, issued the following communication to the Punjabi Academy:

> "That, another meeting was held with the Commission-cum Secretary (Education) on 24.3.1992 to discuss the problems relating to part-time teachers appointed by the Punjabi and Urdu

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Academy in which it was decided that those teachers who were qualified for appearing in the test which was being conducted by the Directorate of Education they should be asked to submit their applications if not already submitted, it was also suggested that a special recruitment drive should be made after seeking relation from this Hon'ble Lt. Governor for inducting these part-time teachers in the regular pay scales for the posts for which they were qualified. It was also decided that those teachers who did not fulfill educational as well as teaching qualifications he encouraged to complete their educational as well as teaching qualifications with a span of 3 to 4 years and after the completion of prescribed qualifications, the same procedure as that of qualified teachers could be adopted for their regular appointment if found suitable. The question of training of untrained teachers as decided by the Chief Secretary of NCT, Delhi in its meeting held on 29.04.1991 was discussed and it was apprehended that the staff engaged for imparting training to untrained teachers as decided by the Chief Secretary of NCT, Delhi in its meeting held on 29.04.1991 was discussed and it was apprehended that the staff engaged for imparting training to the untrained teachers would subsequently claim regular appointment full time basis and it would be extra burden on the Exchequer."

15. This was followed up by letter dated 20 September 1993 addressed by the DOE to the Joint Secretary (Education), GNCTD, which read thus:

"GOVT. OF THE NATIONAL CAPITAL TERRITORY OF
DELHI
DIRECTORATE OF EDUCATION
(PLANNING BRANCH)

No. F-DE-18-8(10)/92-Plg./3874 Dated. 20-09-93

To,

The Jt. Secretary (Education),
Department of Education,
Govt. of N.C.T. of Delhi
Delhi.

Sub: Age relaxation to part-time teachers employed by Punjabi/ Urdu Academies and Adult Schools.

Sir,

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The Lt. Governor, Delhi is pleased to allow age relaxation to teachers of Punjabi/ Urdu Academies and Adult Schools to the extent of period they have worked as part-time teachers in the respective academies and adult schools. This relaxation is applicable to them for appearing in Recruitment Test for Teaching posts to be held by the Government of National Capital Territory of Delhi.

Yours Faithfully,
Sd/-
(Shakti Sinha)
Director of Education

No. F-DE-18-8(10)/92-Plg./3874 Dated. 20-09-93"

16. However, the Punjabi Academy never informed the appellants about the aforesaid decision, resulting in the vacancies being filled up from the open market.

17. On 26 August 2010 and 12 January 2011, the appellants represented to the DOE, seeking regularisation and parity with regular TGTs employed by the DOE. According to the writ petition, the Punjabi Academy adopted the stand that, after the Cabinet decision dated 17 April 2008, the appellants were no longer employees of the Punjabi Academy and were employees of the DOE.

18. The appellants, therefore, addressed a representation to the Public Information Officer[12] in the DOE, under the Right to Information Act, 2005, seeking information in the above regard. The PIO in the DOE, by response dated 3 March 2011, maintained the stand that the appellants were not employees of the DOE. The

[12] "PIO" hereinafter

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response further stated that it was the Punjabi Academy which decided the appellants' pay-scale and disbursed their salary.

19. As the Punjabi Academy and the DOE were both washing their hands off the appellants, the appellants approached this Court by means of WP (C) 2571/2011, with the following prayer clause:

> "The petitioner most humbly prays that this Hon'ble court may be pleased to:-
>
> a) Issue appropriate writ in the nature of mandamus or any other appropriate writ directing the respondents to regularize the services of the petitioners and provide them with the salary and benefits at par with the regular teachers.
>
> b) Issue necessary directions to the respondents to make equal payment for the equal work done.
>
> c) Issue any other further order/orders or direction/directions as this Hon'ble court may deem fit and appropriate to the facts and circumstances of this case.

C. The Impugned Judgment

20. The learned Single Judge has, by judgment dated 26 July 2013, dismissed the appellants' writ petition. In doing so, the learned Single Judge has relied on the judgment of the Supreme Court in ***Secretary, State of Karnataka v. Uma Devi***[13].

21. On the aspect of regularisation, the reasoning and findings of the learned Single Judge read as under (omitting the extract from the Cabinet decision dated 17 April 2008, which was already been reproduced earlier in this judgment:

[13] **(2006) 4 SCC 1**

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"5. The Constitution Bench of the Supreme Court in ***Umadevi's case*** (*supra*) held that there cannot be backdoor entry in public employment. Public employment can only be when there exists sanctioned posts, there are vacancies in sanctioned posts, there are persons who are duly qualified and these duly qualified persons are selected after open competition, viz by calling candidates through advertisement in newspapers or through the employment exchange. Therefore, if there are no sanctioned posts or no vacancies in sanctioned posts, then, there cannot take place regular appointments even if the recruitment process is through regular method. In the facts of the present case, therefore, we have to see whether there existed sanctioned posts, and vacancies in sanctioned posts in the respondent No.4 with respect to TGT (Punjabi) teachers when the petitioners were appointed. Nothing in this regard has, however, been averred in the writ petition and no documents have also been filed that, there existed sanctioned posts of TGT (Punjabi) when all the ten (10) petitioners were appointed by respondent No.4 since the year 1988. In fact, as already stated above, the petitioners were appointed on part time basis. They were employees whose employment as per the appointment letters could be terminated at any point of time. In fact, only much later in the year 2008, by the order dated 20.6.2008, the petitioners were allowed full time duties and there was enhancement of their salaries.

6. The order dated 20.6.2008 was passed pursuant to the Cabinet decision No. l394 of respondent No. l dated 17.4.2008 and that decision has been filed at pages 76 to 85 of the paperbook of the petition. The petitioners, in this regard, will be governed by para 7 of the same, which reads as under:

7. A reference to the aforesaid para shows that the Government considered the position of persons who were placed similarly to the petitioners, and it was observed that regularization can only be through regular recruitment process i.e., selection process through the Delhi Subordinate Services Selection Board. The only benefit which was given to persons like the petitioners, and other persons similarly situated, was that the age relaxation was given to appear in the open competitive examination. I may note that the Supreme Court in ***Umadevi's case (supra)*** has categorically held that Courts will not pass any orders to interdict the regular recruitment/selection process. Therefore, the aforesaid para 7 makes it clear that the petitioners were not entitled to be regularised because of the ratio of the Supreme Court in ***Umadevi's case (supra)*** or in terms of the Cabinet decision of respondent No. l dated 17.4.2008, and which Cabinet decision obviously would not and has not directed regularization in violation of the ratio of ***Umadevi's case (supra)***.

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8. In view of the above, I reject the prayer of the petitioners by which they seek regularization to the post of TGT (Punjabi). Of course, I must for the completion of narration clarify that the petitioners are not employees of respondent No.l and they are only on deployment in the schools of respondent No.l. The regularization, therefore, in any case, cannot be by respondent No. l."

22. On the appellants' prayer for grant of pay-scale as was being granted to regular TGTs (Punjabi) employed by the DOE, the learned Single Judge has observed and ruled as under:

"9. The second relief claimed by the petitioners in the writ petition is for the petitioners to be paid equal salary with those teachers who are doing the same work as teachers in the schools of respondent No. l. The doctrine of equal pay for equal work is now well entrenched in service jurisprudence and this doctrine requires equivalence in qualifications with posts with which similarity is claimed and also similarity of duties with respect to the nature of the job/work in the two posts, besides other factors including hierarchy of promotions.

10. When we refer to the writ petition we do not find that from 20.6.2008 when the petitioners were given full time duties what were the qualifications which were required by respondent No. l for appointment as TGT (Punjabi). Also, there are no averments in the writ petition as to how the scope of duties of the petitioners are more or less same as those of other teachers being TGT (Punjabi) in schools of respondent No.l. Therefore, in the absence of any averments I was inclined to dismiss the writ petition but possibly the petitioners may have a case and with respect to which I say nothing on merits one way or the other, and this writ petition is dismissed reserving liberty to the petitioners to, if they so desire, file a petition pleading the requirements of the doctrine of equal pay for equal work and also satisfy factually as to how the petitioners would be able to take benefit of that doctrine."

23. The impugned judgment, therefore, concludes thus:

"11. In view of the above, the writ petition is dismissed so far as the relief of regularization of the petitioners is concerned, however, the petitioners are at liberty to file a fresh petition with respect to claiming the doctrine of equal pay for equal work for the

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petitioners to claim the same monetary emoluments as the regular TGT (Punjabi) in the schools of respondent No. 1."

24. Aggrieved by the impugned judgment, the appellants have filed the present LPA.

D. Rival Submissions

25. We have heard Mr. M.K. Bhardwaj, learned Counsel for the appellants and Mr. Yeeshu Jain, learned ASC for the Govt. of NCT of Delhi.

26. Learned Counsel have also filed written submissions.

27. Mr. Bhardwaj submits that the case is squarely covered by the recent judgment of the Supreme Court in ***Jaggo v. Union of India*** and other decisions which followed it. He submits that the appellants were recruited following a written test and interview and could not, therefore, be said to have been illegally appointed. They were deputed against vacant posts in various schools run by the DOE, as has been acknowledged in para 2 of the impugned judgment. Having served the DOE for over two decades, the appellants were, of right, entitled to regularisation.

28. Mr. Bhardwaj also contests the findings of the learned Single Judge that the appellants were employees of the Punjabi Academy and could not, therefore, be regularised by the DOE. He points out that the entire funds of the Punjabi Academy were provided by the GNCTD and the amount of salary payable to the appellants was also

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determined by the GNCTD. The GNCTD disbursed funds to the Punjabi Academy which, in turn, paid the appellants. He relies, for this purpose, on the order dated 20 June 2008, whereby the appellants were made full time TGTs. Mr. Bhardwaj submits that, in these circumstances, the veil was required to be lifted, which would reveal that the source of funds, from which the appellants were disbursed their salaries, was the GNCTD. The GNCTD availed the services of the appellants. The Punjabi Academy was, therefore, merely a canalising agency.

29. Apropos the appellants claim to equal pay for equal work, Mr. Bhardwaj submits that there was no intelligible differentia on the basis of which the appellants could be paid less than the pay disbursed to regular TGTs employed by the DOE. They were discharging identical duties and therefore, were entitled to parity in service conditions.

30. Mr. Yeeshu Jain, learned ASC for the GNCTD, by way of response, submits that the terms and conditions of the appellants' appointment, as contained in their appointment letters issued from time to time, made it clear that they had no right to regularisation or to parity in service conditions with regular TGTs. They could not claim to be equal or similar to teachers who had been appointed against regular posts in accordance with applicable recruitment rules[14]. They had been appointed for the specific purpose of teaching Punjabi. Mr. Jain submits that regular posts of TGT and PGT (Punjabi) were available with the DOE, which were always filled in accordance with

[14] "RRs" hereinafter

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the applicable RRs. Regularisation could not be sought as an alternate method of employment.

E. Analysis

31. This is the nth such case coming before us.

32. ***Uma Devi***, which was earlier being interpreted as an absolute embargo against regularisation of persons appointed on contract, or as casual or *ad hoc* employees, has, thereafter, been explained and clarified by this Court in a line of decisions. The Supreme Court has, over the past two to three years, held that ***Uma Devi*** intended to curb the menace of backdoor appointment, and cannot be used as a shield to justify appointment of persons on temporary, *ad hoc*, casual or contract basis, continuing their service for years on, and, when they had reached a stage where they could not secure any other appointment, telling them to pack their bags and go home. No welfare State can resort to such measures, and the very fact that the employees had been appointed against sanctioned post, and that their services had been availed by the established without blemish for years, itself conferred, on them, a right to regularisation.

33. This Court has, in its judgment in ***Pawan Sharma,*** examined these aspects in detail, after noting the judgments of the Supreme Court in ***Vinod Kumar***, ***Jaggo***, ***Shripal*** *and* ***Dharam Singh***. We have attempted to extract, in each case, the takeaway from the decisions in question. The judgment of this Court has been affirmed on merits by the Supreme Court by a detailed order. We, therefore, with humility,

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deem it appropriate to reproduce the following paragraphs from the decision in ***Pawan Sharma*** which, according to us, exposit the legal position:

> "**The law**
>
> 1. Four judgments, rendered by Hon'ble Division Benches of the Supreme Court within the past two years, have fundamentally redrawn the horizons of service jurisprudence insofar as they deal with the rights of persons who have rendered uninterrupted, blemish-free service for long, following initial appointments on "casual", "contractual", "*ad hoc*" or "temporary" basis. The Supreme Court has held, in no uncertain terms, that these labels do not matter anymore and that continuous blemish-free service, following a process of recruitment which is not illegal, *ipso facto* entitles such appointees to regularization. The Supreme Court has gone to the extent of holding that, in such cases, it does not matter whether the posts against which the appointments were made are temporary or permanent, or even whether the appointees possess the requisite educational qualifications for the posts and has recently expanded the paradigm even to issuance of directions to the respondents to create posts on which the appointees would be regularized.
>
> 2. These writ petitions are squarely covered by the above decisions. As such, before adverting to the facts of the present petitions, we deem it appropriate to examine the aforesaid four decisions chronologically.
>
> 3. ***Vinod Kumar v. Union of India***
>
> 3.1 The appellants before the Supreme Court, in this case, were appointed as Accounts Clerks under a temporary scheme based arrangement, albeit after a selection process involving written test and *viva voce*. On the date when the judgment was rendered by the Supreme Court, they had been working continuously on the said posts for over 25 years. They petitioned the Central Administrative Tribunal, seeking regularization. The Tribunal, as well as thereafter the High Court, dismissed the pleas of the appellants on the ground that their appointments were temporary and made under a specific scheme. Reliance was placed, for the purpose, on the well-known decision of the Constitution Bench of the Supreme Court in ***State of Karnataka v. Uma Devi***.
>
> 3.2 The Supreme Court reversed the decision of the Tribunal and the High Court, reasoning thus:

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"5. Having heard the arguments of both the sides, this Court believes that *the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement*. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and *their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.*

6. The application of the judgment in ***Umadevi*** 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 *Umadevi*.

7. The judgment in ***Umadevi*** 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. Para 53 of ***Umadevi*** is reproduced hereunder:

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in ***State of Mysore v.***

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> ***S.V. Narayanappa***[15], ***R.N. Nanjundappa v. T. Thimmiah***[16], and ***B.N. Nagarajan v. State of Karnataka***[17] 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 abovereferred 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."
>
> (emphasis in original)
>
> 8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments *and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status*. The failure to recognise the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations."

3.3 The takeaway

The following propositions emerge from this decision:

[15] **AIR 1967 SC 1071**
[16] **(1972) 1 SCC 409**
[17] **(1979) 4 SCC 507**

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(i) What matters is the "essence of employment".

(ii) The rights flowing therefrom cannot be determined by the initial terms of appointment, where the actual course of employment has evolved significantly over time.

(iii) In assessing the rights of the employees, in such cases, the relevant considerations would be:

(a) continuous service of the employees in the capacities of regular employees,

(b) performance of duties by such employees which are indistinguishable from those performed by holders of permanent posts and

(c) selection of the employees by a process which mirrors regular recruitment.

(iv) The substantive rights of the employees, which have evolved over a period of time, cannot be perpetually denied by relying on non-compliance with procedural formalities at the commencement of employment.

(v) The substantive rights of such employees accrue over a considerable period through continuous service.

(vi) Even if appointments in such cases were not made strictly in accordance with the prescribed rules and procedures, they could not be treated as illegal if they had followed the procedure of regular employment such as conduct of written examinations and interviews.

3.4 Following the above reasoning, the Supreme Court held that the appellants before it were entitled to regular status and that failure to regularize them would run counter to the principles of equity and fairness. The respondents before the Supreme Court were, therefore, directed to regularize the appellants within three months.

4. ***Jaggo v. Union of India***

4.1 The appellants in ***Jaggo*** were *safaiwalas* and *khallasis*, engaged by the Central Water Commission[18] on part-time *ad hoc* terms in 1993, 1998 and 1999 for cleaning and maintaining offices of the CWC and for performing duties of gardening, dusting and

[18] "CWC" hereinafter

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ancillary maintenance. They were, therefore, performing essential housekeeping work necessary for keeping the offices of the CWC functioning. The appellants approached the Tribunal seeking regularisation. The Tribunal dismissed their OA, on the ground that they had not been engaged against regular vacancies and did not have, to their credit, sufficient full-time service of 240 days per year to entitle them to regularization. Following the judgment of the Tribunal, the services of the appellants were terminated on 27 October 2018. The appellants, therefore, approached the High Court seeking reinstatement and regularization. The High Court also dismissed the writ petition, observing that they

(i) were doing part-time work,

(ii) had not been appointed against sanctioned posts,

(iii) did not have, to their credit, sufficient full-time service needed for regularization and

(iv) did not possess the minimum educational qualifications for regular appointment.

The appellants challenged the decision of the High Court by way of SLP to the Supreme Court.

4.2 The following passages from the judgment of the Supreme Court set out its *ratio decidendi:*

> "15. Furthermore, the respondents' conduct in issuing tenders for outsourcing the same tasks during the pendency of judicial proceedings, despite a stay order from the Tribunal directing maintenance of status quo, reveals lack of bona fide intentions. Such actions not only contravened judicial directives but also underscored the respondents' unwillingness to acknowledge the appellants' rightful claims to regularization.
>
> 16. *The appellants' consistent performance over their long tenures further solidifies their claim for regularization.* At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

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17. *As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed—cleaning, sweeping, dusting, and gardening—does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades.* Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. *The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.*

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19. It is evident from the foregoing *that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services*. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in ***Uma Devi (supra)*** does not intend to penalize *employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities.* The said judgment sought to prevent backdoor entries and *illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially adhoc or temporary into a scenario demanding fair regularization*. In a recent judgment of this Court in *Vinod Kumar* v. *Union of India*, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee.

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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*.

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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 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

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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*

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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.

(Italics supplied)

4.3 The takeaway

Thus, from the above passages, the propositions laid down by the Supreme Court, and the reasoning of the Supreme Court in allowing the appellants' appeals may be set out thus:

(i) Long standing and uninterrupted service of the appellants could not be brushed aside by labeling their initial appointment as part-time or contractual.

(ii) The essence of the appellants' employment had to be seen in the light of:

(a) their sustained contribution,

(b) the integral nature of their work, and

(c) the fact that their entry was not through any illegal or surreptitious route.

(iii) The appellants were holding essential and indispensable functions related to the basic operational functionality of the CWC.

(iv) The appellants had rendered continuous and uninterrupted service for 10-20 years. Their re-engagement was not sporadic or temporary in nature. They, therefore, were performing regular and recurrent service, akin to the responsibilities associated with the sanctioned posts. That the appellants' services were indispensable was also manifest from the fact that the respondent did not engage any other personnel to perform the tasks being performed by the appellants.

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(v) In such circumstances, the respondent could not be permitted to contend that the posts held by the appellants were not regular, as the work performed by them was perennial and essential to the functioning of the CWC offices.

(vi) Recurrent nature of the duties performed by the appellants necessitated their classification as regular posts, irrespective of how their initial engagements labeled.

(vii) The subsequent outsourcing by the respondent of the services being performed by the appellants to private agencies also demonstrated the inherent need for the said services.

(viii) In such circumstances, the abrupt termination of the appellants without notice was arbitrary and violative of the principles of natural justice.

(ix) Contractual employees were also entitled to a hearing before any adverse action was taken against them, particularly where their service records were unblemished.

(x) The consistent performance of the appellants over a long period solidified their claim for regularisation. Their services were extended continuously.

(xi) In such circumstances, the respondent's plea that the appellants did not possess the requisite educational qualifications was unsustainable. Moreover, the appellants were performing Group-D work, for which educational qualifications were not central.

(xii) Besides, persons with less service than the appellants had been regularised, thereby also resulting in discrimination.

(xiii) The decision in ***Uma Devi*** was never intended to penalize employees with long years of service, performing necessary functions of the organization. It was intended to prevent backdoor entries and illegal appointments.

(xiv) Prolonged, continuous and unblemished service of the employees, performing essential tasks, transformed the initially temporary employment into a scenario demanding fair regularisation.

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(xv) As was held in ***Vinod Kumar,*** procedural formalities could not, in such circumstances, be used to deny regularisation of service to employees whose employment was termed "temporary", but who performed the same duties as were performed by regular employees, over an extended period.

(xvi) In such circumstances, the Court was required to look beyond the surface level of the appointment and to consider

(a) the realities of the employment,

(b) continuous and long-term service of the employee,

(c) the indispensable nature of their duties and

(d) the absence of *mala fides* or illegalities in their initial appointment.

(xvii) In such circumstances, refusing regularisation to the employees because their original terms of employment did not envisage regularisation, or because of belated outsourcing of same work, was contrary to the principles of fairness and equality.

(xviii) ***Uma Devi*** was often misinterpreted and misapplied to deny legitimate claims to regularisation, of long-serving employees.

(xix) In the case before the Supreme Court, claims of employees had been rejected even where their appointments were not illegal, but merely lacked adherence to procedural formalities.

(xx) ***Uma Devi*** had, thus, been weaponized against employees who had rendered indispensable service over decades.

4.4 Following the above reasoning, the Supreme Court quashed the termination order of the appellant before it, directed that they be reinstated and regularized forthwith, albeit back wages, but with continuity of service.

5. ***Shripal v. Nagar Nigam, Ghaziabad***

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5.1 This was an appeal which emanated out of proceedings under the Industrial Disputes Act, 1947.

5.2 The workmen before the Supreme Court had been engaged as Gardeners in the Horticulture Department of the Ghaziabad Nagar Nigam[19] since 1998 and 1999. They continuously discharged horticultural and maintenance duties, though no formal appointment letters were ever issued to them. In 2004, they raised an industrial dispute seeking regularisation. While the proceedings were pending, several of the workmen were terminated orally in mid July 2005. The State Government referred the disputes relating to regularisation of the workmen, as well as legality of their termination, to the Ghaziabad Labour Court for adjudication. The Labour Court passed contradictory orders, holding the termination illegal in some cases and holding that the workmen had no right to regularisation in others.

5.3 Cross writ petitions were filed by the GNN and the workmen before the High Court of Allahabad. The High Court, holding that several disputed issues existed, partially modified the award of the Labour Court, directing re-engagement of the workmen on daily wages with pay equivalent to minimum of the regular pay scale of Gardeners, as well as consideration of their regularisation in future.

5.4 The judgment of the High Court was also challenged before the Supreme Court both by GNN and the workmen.

5.5 Before the Supreme Court, the workmen contended that they had continuously discharged horticultural and maintenance duties under direct supervision and control of the GNN and that their longstanding and continuous employment entitled them to regularisation. It was also asserted that their termination was illegal. As against this, the GNN contended that

(i) no proper selection process had been followed to appoint the workmen,

(ii) their appointment was not against sanctioned posts,

(iii) all horticulture work was carried out through independent contractors appointed via tender,

(iv) in view of the decision in ***Uma Devi***, no daily wager could claim a right to permanent absorption without adherence to constitutional requirements and in the absence of duly sanctioned vacancies, and

[19] "GNN" hereinafter

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(v) the workmen had not demonstrated that they had completed 240 days of continuous work in any calendar year.

5.6 The Supreme Court held as under:

"9. On a plain reading of this section, we can deduce that *any unilateral alteration in service conditions, including termination, is impermissible during the pendency of such proceedings unless prior approval is obtained from the appropriate authority. The record in the present case does not indicate that the Respondent Employer ever sought or was granted the requisite approval. Prima facie, therefore, this conduct reflects a deliberate attempt to circumvent the lawful claims of the workmen, particularly when their dispute over regularization and wages remained sub judice.*

10. The Respondent Employer consistently labelled the appellant Workmen as casual employees (or workers engaged through an unnamed contractor), yet there is no material proof of adherence to Section 6N of the U.P. Industrial Disputes Act, 1947, which mandates a proper notice or wages in lieu thereof as well as retrenchment compensation. In this context, *whether an individual is classified as regular or temporary is irrelevant as retrenchment obligations under the Act must be met in all cases attracting Section 6N. Any termination thus effected without statutory safeguards cannot be undertaken lightly.*

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 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

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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* 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*

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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.

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…….

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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*."

(emphasis supplied)

5.7 The Supreme Court also followed its earlier decision in ***Jaggo***.

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5.8 Following the above discussion, the Supreme Court directed reinstatement of the workmen and further directed the GNN to initiate a fair and transparent process for regularizing them within six months from the date of reinstatement, considering the fact that they have performed perennial municipal duties akin to permanent posts.

5.9 The takeaway

From this decision, the following propositions emerge:

(i) Where persons have been appointed and continuously worked on their posts uninterruptedly for long periods of time without any complaint, it was unconstitutional to terminate them or not to regularize their services, especially where the work undertaken by them was perennial and essential in nature.

(ii) In such cases, the plea that no proper selection process had been followed or that the workmen had not been appointed against any sanctioned posts, was not available to the establishment.

(iii) ***Uma Devi*** did not militate against directing regularisation of the services of the workmen in such a case.

(iv) Nor were the workmen in such a case required to establish that they had completed 240 days of continuous service in any year.

(v) It was also not open to the establishment to contend, in such cases, that there was any ban on recruitment.

6. ***Dharam Singh v. State of U.P.***

6.1 In ***Dharam Singh***, the Supreme Court carried the principles laid down in ***Vinod Kumar***, ***Jaggo*** and ***Shripal*** a notch further.

6.2 ***Dharam Singh*** opened with the following exordium:

"*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*

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> *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."

6.3 The workmen in ***Dharam Singh*** had been employed as peon/attendant and driver, on daily wage basis in the UP Higher Education Services Commission[20].

6.4 On 24 October 1991, the UPHESC resolved to create 14 Class 3 and Class 4 posts and sought sanction from the State Government. This request was reiterated by the UPHESC on 16 October 1999. The request was rejected by the State Government on 11 November 1999 citing financial constraints.

6.5 The workmen thereupon approached the High Court of Allahabad by way of a writ petition, seeking a mandamus to the State to sanction/create 14 posts in Class 3/Class 4 for the UPHESC in terms of the resolution of the UPHESC and to regularize the workmen against the said posts.

6.6 This petition was disposed of, by the High Court on 24 April 2002 with a direction to the UPHESC to send a fresh recommendation for sanction of appropriate Group C/Group D posts and a direction to the State to take a fresh decision thereon. In the meanwhile, it was directed that the appellants be paid the minimum of the applicable pay scale.

6.7 Pursuant thereto, the UPHESC sent a fresh recommendation on 25 November 2003, which was again declined by the State, citing financial grounds and ban on creation of new posts.

6.8 This decision was again carried by the workmen to the High Court which dismissed the writ petition on 19 May 2009 on the ground that there were no rules for regularization in the UPHESC and that no vacancies existed in which the workmen could be accommodated and the prayer for regularization was, in any case, impermissible in view of the law laid down in ***Uma Devi.*** This decision was affirmed by the Division Bench of the High Court in appeal observing that the workmen were daily wagers and there was no provision in the Rules of the UPHESC envisaging their regularization and no vacancy existed in which they could be accommodated.

[20] "UPHESC" hereinafter

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6.9 In these circumstances, the Supreme Court identified the issue that arose before it for consideration thus, in para 6:

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

6.10 The Supreme Court held the approach of the High Court to be unacceptable. The relevant paragraphs from the decision of the Supreme Court may be reproduced hereunder:

> "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 longstanding 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.*

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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*** and in ***Shripal 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.

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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.

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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*.

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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*."

6.11 Following the above discussion, the Supreme Court issued the following directions in para 19 of the report:

"19(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

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

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

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

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 Judgment."

6.12 The justification for issuing the above directions, which were unquestionably drastic in nature was thus provided in para 20 of the judgment:

"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

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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*."

6.13 The Takeaway

6.13.1 Besides reiterating the principles already contained in its earlier decisions in ***Vinod Kumar***, ***Jaggo*** and ***Shripal***, the Supreme Court in ***Dharam Singh*** went a step further and in fact granted the relief, sought by the appellants in that case, for a direction to the Executive Authorities to sanction posts and regularize the appellants against the said posts. This is a radical development in the law as, normally, the power to sanction posts vests exclusively in the Executive, and no mandamus can issue to an Executive Authority to create posts. The significance of this direction is underscored by the fact that, in ***Union of India v. Ilmo Devi***[21], one of the judgments which, in another similar case, was cited by us as contrary to the principles enunciated in ***Jaggo***, the Supreme Court held against the employees precisely on the ground that the Court could not direct creation of posts. By endorsing the prayers of the appellants in ***Dharam Singh*** seeking issuance of such a direction, therefore, the Supreme Court has clearly heralded development of the law beyond ***Ilmo Devi***.

6.13.2 The Supreme Court has also, in fact, noticed this fact in para 8 of the judgment. In the said paragraph, the Supreme Court observed that "while creation of posts is primarily an executive function, the refusal to sanction posts cannot be immune from judicial scrutiny for arbitrariness". Thus, in a case in which the appellants had been working since long, after being appointed on contractual basis, with their contracts being periodically extended, and when they were rendering essential functions, the Supreme Court went to the extent of directing creation of posts to accommodate and regularize the appellants.

6.13.3 Another important take away from the judgment in ***Dharam Singh*** is the rejection, by the Supreme Court, of the contention of the State, that the appellants had been continuing on their posts by

[21] **(2021) 20 SCC 290**

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virtue of interim orders passed by the Court. This is important because the respondents, even before us, have advanced an identical contention. The Supreme Court, in no uncertain terms, negatived the contention, stating that interim protection had been granted precisely because the employees concerned had rendered unblemished service for long periods of time. The interim relief granted was, therefore, a recognition of the rights of the employees, and could not be cited as a ground to question their rights."

(Emphasis as contained in the original report)

34. The decision in ***Pawan Sharma*** was carried in appeal to the Supreme Court by the GNCTD which disposed of, the Civil Appeal No. (S) 7837/2026 in the following terms, by order dated 14 May 2026:

"O R D E R

1. Delay condoned.

2. Leave granted.

3. Heard learned Counsel for the parties.

4. Though *we are not inclined to interfere with the direction issued by the High Court to regularize the writ petitioners (the respondents herein) on the posts they were originally appointed*, we deem it appropriate to clarify the direction contained in paragraph 22 of the impugned order so that the seniority of all those regularly appointed in between the date of initial appointment of the respondents and the date of judgment is not disturbed.

5. Accordingly, we clarify that the direction contained in paragraph 22 of the impugned order shall not affect the inter se seniority of all those who were regularly appointed between the date of initial appointment of the respondents and the date of the judgment of the High Court. In effect, the respondents shall be placed below those regularly appointed candidates in the order of seniority.

6. With the aforesaid clarification/ modification of the impugned order, this appeal is disposed of.

7. Pending application(s), if any, shall stand disposed of."

(Emphasis supplied)

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35. Thus, the view of this Court stands affirmed on merits by the Supreme Court, save and except on the aspect of seniority of such employees *vis-à-vis* those who were regularly recruited in the interregnum.

36. The law has travelled further since the decision in ***Pawan Sharma***, and we may refer to the judgments which succeeded ***Pawan Sharma*** in this regard.

37. ***Bhola Nath***

37.1 The appellants in ***Bhola Nath*** were employed as Junior Engineers (Agriculture) in the Office of the Director, Soil Conversation, State of Jharkhand. The facts attending their appointment, in the light of which the dispute arose, are thus stated in paras 4.1 to 4.4 of the report:

> "4.1. *Vide* Office Order No. 1395 dated 6th September, 2012, the Director of Soil Conservation stated, *inter alia*, that a total of 22 regular posts of Junior Engineers (Agriculture) stood sanctioned for the Land Conservation Directorate of the respondent-State and its subordinate offices. Pursuant thereto, in September 2012, respondent No. 5 issued an advertisement inviting applications for appointment against the aforesaid 22 sanctioned posts. The terms and conditions of the advertisement stipulated that the appointments would be temporary and on a contractual basis and that the respondent-State would not be liable to regularize the appointees. It was further provided that the initial term of engagement would be for a period of one year, extendable thereafter subject to satisfactory performance.
>
> 4.2. Upon conclusion of the aforesaid recruitment process, the appellants were declared successful *vide* Office Order dated 27th December, 2012, and were thereafter allotted their respective postings *vide* Office Order dated 29th December, 2012.

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> 4.3. The appellants were granted extensions on completion of their annual contractual terms. During this period, respondent No. 5, *vide* letter dated 25th August, 2015, forwarded their representation to the respondent-State apropos regularization of services of the appellants and proposed that steps be taken to frame rules and consider regularization of their services.
>
> 4.4. The respondent-State continued to grant yearly extensions to the appellants from time to time. However, by the last extension orders issued for the period from December 2022 to February 2023, the appellants apprehended that their engagement was likely to be discontinued and that the said extension would be the final one. In this backdrop, the appellants submitted representations to the respondents, requesting regularization of their long years of dedicated service and invoking the obligation of the State to act as a model employer."

Thus, as in the present case, the appellants in ***Bhola Nath*** were also appointed on temporary and contractual basis against regularly sanctioned post of Junior Engineer[22]; the terms and conditions of their appointment orders specifically stipulated that they were not entitled to regularisation and that the State was not liable to regularise their services and they were periodically extended on the same terms and conditions. There is, therefore, considerable parity between the facts in ***Bhola Nath*** and those before us.

37.2 In para 8 of the report, the Supreme Court identified the two issues arising before it for consideration, thus:

> "8. Having heard learned senior counsel for the appellants and learned counsel for the respondents, the following issues arise for our consideration: -
>
> I. Whether the judgments passed by the High Court warrant interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India?

[22] "JE" hereinafter

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> II. Whether the action/inaction of the respondent State in not recognizing the appellants' continuous service for the purpose of regularization is arbitrary and violative of Article 14 of the Constitution of India?"

37.3 The Supreme Court proceeded to allow the appeals filed by Bhola Nath and other appellants. The reasoning of the Supreme Court makes for educative reading, and deserves to be reproduced in *extenso*, thus:

> "9.3. *In the present case, the respondent-State has engaged the services of the appellants for a period exceeding 10 years*. Upon completion of this long tenure, the respondents, as apprehended by the appellants, declined to grant any further extension on the ground that the engagement was contractual in nature. Such a decision necessarily warrants examination on the touchstone of the equality principles enshrined in the Constitution, which obligate the State to act as a model employer and to take decisions free from arbitrariness. In our consideration of the second issue, we shall examine whether non-interference with the impugned judgments would result in substantial and grave injustice to the appellants.
>
> ISSUE II. Whether the action/inaction of the respondent-State in not recognizing the appellants' continuous service for the purpose of regularization is arbitrary and violative of Article 14 of the Constitution of India?
>
> 10. The learned Single Judge, *vide* common order, dismissed the writ petitions filed by the appellants seeking a writ of mandamus directing the respondent State to regularize their services. In doing so, *the writ Court placed reliance on the terms and conditions of the employment agreement entered into between the appellants and the respondents.* The learned Single Judge, in this regard, recorded the following findings: -
>
> > i. The appellants were appointed on a purely contractual basis pursuant to a decision of the Finance Department to fill 22 sanctioned posts through contractual engagement, *the expenditure being met from non-plan funds*. Following issuance of an advertisement and completion of the selection process, the appellants were appointed by entering into contracts of employment for an initial period of one year, extendable from time to time for fixed durations.

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ii. The appellants were granted extensions periodically, with the last extensions having been issued in the year 2023 as a one-time measure. The respondent-State treated the said decision as a conscious policy determination, which, according to the learned Single Judge, did not warrant interference by the Court.

iii. The appellants were held not entitled to regularization under the regularization scheme framed by the respondent-State in the year 2015, as modified in 2019, which prescribed completion of ten years of continuous service as on the cut-off year 2019. It was further noted that the appellants had not laid any challenge to the validity of the said regularization scheme.

iv. Since the appellants were *appointed on a contractual basis and continued only through periodic extensions*, it was held that they did not possess any statutory or legal right to continue in service once the contractual period, including its extensions, came to an end.

v. Emphasis was laid on the fact that *the appellants were fully aware, and were put to notice on each occasion of renewal, that their engagement was contractual and limited to a specified tenure.* In view thereof, the learned Single Judge held that no question of legitimate expectation or enforceable right to renewal or regularization could arise, nor could any right be said to have crystallised in their favour.

vi. It was further noted that the appellants had not been replaced by another set of contractual employees. On the contrary, the material on record indicated that *the respondent-State had undertaken regular recruitment and appointed nine persons as regular employees through a fresh advertisement.*

10.1. Aggrieved by the decision of the writ Court, the appellants preferred intra-Court appeals before the High Court. The learned Division Bench upheld the judgment of the writ Court and recorded the following findings: -

i. The law relating to regularization or absorption of contractual employees was held to be well settled, namely that such employees are governed by the terms and conditions of their engagement, the relationship being

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founded upon a bilateral contract between the employee and the employer.

ii. It was further held that the terms and conditions of a contract cannot be altered, nor can new conditions be introduced, by issuance of judicial directions, as doing so would amount to impermissible re-writing of the contract. Once the parties have consciously entered into contractual terms, they cannot subsequently resile therefrom or question those conditions.

State as model employer: -

11. At the outset, *we find it necessary to express our disapproval of the manner in which the High Court has approached the present lis*. The controversy before the Court was not one of mere acquiescence or implied waiver of rights. *The High Court, in our view, has proceeded on a mechanical application of precedents without engaging with the core constitutional issues involved, thereby reducing the dispute to one of acceptance of contractual terms, divorced from its larger constitutional context.*

11.1. This Court has consistently held that the State, being a model employer, is saddled with a heightened obligation in the discharge of its functions. *A model employer is expected to act with high probity, fairness and candour, and bears a social responsibility to treat its employees in a manner that preserves their dignity. The State cannot be permitted to exploit its employees or to take advantage of their vulnerability, helplessness or unequal bargaining position.*

11.2. It therefore follows that the State is required to exercise heightened caution in its role as an employer, *the constitutional mandate casting upon it a strict obligation to act as a model employer, an obligation from which no exception can be countenanced.*

Fundamental Rights and their waiver:

11.3. In the present case, *the appellants were appointed by the respondent-State against sanctioned posts of Junior Engineers (Agriculture)*, with the engagement being described from the inception as contractual in nature. The terms and conditions governing the engagement stipulated that the appointment would be for an initial period of one year, extendable thereafter subject to satisfactory performance.

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11.4. The respondent-State accordingly granted extensions to the appellants from time to time until the year 2023, when it was expressly clarified that the extension being granted would be the last. It was thereafter that the appellants approached the High Court by filing writ petitions seeking a writ of *mandamus* directing the State to regularize their services.

11.5. The consistent case of the appellants has been that the respondent-State's refusal to grant regularization is arbitrary and therefore warrants judicial interference. Article 14 of the Constitution casts a negative obligation upon the State to treat all persons equally, and arbitrariness, being antithetical to the equality principle, is proscribed as violative of Article 14.

11.6. The Constitution Bench in ***Basheshar Nath v. Comm. Income Tax***[23], long ago clarified that fundamental rights guaranteed under the Constitution are incapable of waiver. Consequently, if the action of the respondent-State is found to be violative of Article 14 of the Constitution, the mere fact that the appellants' engagement was governed by contractual terms and conditions cannot be construed as a waiver of their fundamental rights.

Unconscionable Agreements- Contract between Lion and Lamb:

*****

12.1. Relying on the aforesaid reasoning, another two-Judge Bench in ***Pani Ram v. Union of India***[24], reiterated that the guarantee of equality under Article 14 extends even to situations where a person has no meaningful choice but to accept imposed contractual terms, however unfair or unreasonable they may be. Applying this principle to the facts before it, the Court observed thus: -

> "23. **As held by this Court, a right to equality guaranteed under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be**. We find that the said observations rightly apply to the facts of the present case. Can it be said that the mighty Union of India

[23] **AIR 1959 SC 149**
[24] **(2021) 19 SCC 234**

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> and an ordinary soldier, who having fought for the country and retired from Regular Army, seeking re-employment in the Territorial Army, have an equal bargaining power. We are therefore of the considered view that the reliance placed on the said document would also be of no assistance to the case of the respondents.**"**
>
> (emphasis laid)

Therefore, *it is clear that Courts are empowered to invalidate unconscionable elements of a contract where the parties lack the ability to exercise any real or meaningful choice in negotiating its terms. In the present case, the appellants were left with no alternative but to accept the conditions unilaterally prescribed by the respondent-State in order to secure their livelihood and sustain a source of income. It would be entirely unrealistic to assume that, in such circumstances, an employee seeking temporary employment could meaningfully negotiate or assert a position against the overwhelming might of the State machinery.*

12.2. At this juncture, the analogy of apples and oranges serves as a useful reminder that certain relationships are inherently incapable of being assessed on an equal plane. A contract between the State and an employee stands on a similar footing. *The State, in such a relationship, assumes the role of a metaphorical lion, endowed with overwhelming authority, resources and bargaining strength, whereas the employee, who is yet an aspirant, is reduced to the position of a metaphorical lamb, possessing little real negotiating power. To suggest parity between the two, i.e. the lion and the lamb, would be to ignore the stark imbalance that defines the relationship.*

12.3. Therefore, *where a lion contracts with a lamb, the inequality is not incidental but structural, and it is precisely this disproportion that calls for judicial sensitivity. In such situations, the conscience of Constitutional Courts must inevitably tilt in favour of protecting the lamb. We have no hesitation in holding that Constitutional Courts are duty-bound to act to safeguard those who are vulnerable to exploitation, so that employees are not compelled to meekly submit to the demands of a vastly dominant contracting party like the State, but are instead assured that constitutional protections will intervene to prevent such exploitation.*

Legitimate Expectation of the employees: -

13. Another facet requiring consideration in the case of contractual employees, such as the present appellants, is the doctrine of legitimate expectation. *Where employees have*

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continued to discharge their duties on contractual posts for a considerable length of time, as in the present case, it is but natural that a legitimate expectation arises that the State would, at some stage, recognize their long and continuous service. It is in this belief, bolstered by repeated extensions granted by the Executive, that such employees continue in service and refrain from seeking alternative employment, notwithstanding the contractual nature of their engagement. At this juncture, it is thus apposite to advert to the principles governing the doctrine of legitimate expectation as enunciated by this Court in ***Army Welfare Education Society v. Sunil Kumar Sharma***[25], wherein it was held as follows: -

> **"**63. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:
>
> 63.1. *First*, **legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation**;
>
> 63.2. *Secondly*, **legitimate expectation must arise either from an express or implied promise**; or a consistent past practice or custom followed by an authority in its dealings;
>
> …
>
> 63.5. *Fifthly*, **legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis**.
>
> ...
>
> 64. **The aforesaid features, although not exhaustive in nature, are sufficient to help us in deciding the applicability of the doctrine of legitimate expectation to the facts of the case at hand. It is clear that legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in State action.** It does not extend to and cannot govern the operation of contracts between private parties, wherein the doctrine of promissory estoppel holds the field.**"**
>
> (emphasis laid)

It is, therefore, not difficult to comprehend the expectation with which such contractual employees continue in the service of the State. *The repeated conduct of the employer-State in expressing confidence in their performance and consistently granting monetary upgrades & tenure extensions reasonably nurtures an expectation that their long and continuous service would receive further recognition.*

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[25] **(2024) 16 SCC 598**

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13.1. Another Constitution Bench in ***State of Karnataka v. Umadevi***, cautioned that the doctrine of legitimate expectation cannot ordinarily be extended to persons whose appointments are temporary, casual or contractual in nature. The relevant extract of the judgment reads as follows: -

> "47. **When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees**. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."
>
> (emphasis laid)

However, this Court in ***Umadevi (supra)*** clarified that *the bar against invocation of the doctrine of legitimate expectation applies only to those temporary, contractual or casual employees whose engagement was not preceded by a proper selection process in accordance with the extant rules. Consequently, where such engagement is made after following a due and lawful selection procedure, there is no absolute bar in law preventing such employees from invoking the doctrine of legitimate expectation.*

Limits on Perpetual Contractual Engagements:

13.2. In the present case, the respondent-State had engaged the services of the appellants on sanctioned posts since the year 2012. It was only towards the end of the year 2022 that the respondents communicated that no further extension of the appellants' engagement was likely to be granted.

13.3. *In our considered opinion, the aforesaid action is not only vitiated by arbitrariness but is also in clear derogation of the*

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equality principles enshrined in Article 14 of the Constitution. The respondent-State initially engaged the appellants in their youth to discharge public duties and functions. Having rendered long and dedicated service, the appellants cannot now be left to fend for themselves, particularly when the employment opportunities that may have been available to them a decade ago are no longer accessible owing to age constraints.

13.4. *We are unable to discern any rational basis for the respondent-State's decision to discontinue the appellants after nearly ten years of continuous service*. We are conscious that the symbiotic-relationship between the appellants and the respondent-State was mutually beneficial, the State derived the advantage of the appellants' experience and institutional familiarity, while the appellants remained in public service. In such circumstances, any departure from a long-standing practice of renewal, particularly one that frustrates the legitimate expectation of the employees, ought to be supported by cogent reasons recorded in a speaking order.

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

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

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

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those that are merely "irregular", the latter being amenable to regularization upon fulfilment of the prescribed conditions.

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

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

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

FINAL CONCLUSION:

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

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

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

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

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

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

(Italics supplied)

37.4 The takeaway

The following principles emerge from the decision in ***Bhola Nath***:

(i) In such cases, the High Court cannot adopt an approach of mechanical application of precedents without engaging with the involved core constitutional issues, thereby reducing the dispute to one of acceptance of contractual terms, divorced from the larger constitutional context. The Supreme Court has, in fact, gone to the extent of deprecating such an approach on the part of the High Courts.

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(ii) The State, as a model employer, is expected to act with high probity, fairness and candour. It owes a social responsibility to treat its employees in a manner which preserves their dignity. The State cannot exploit its employees or take advantage of their vulnerability, helplessness or unequal bargaining position. There is no exception to the constitutional mandate on the part of the State to act as a model employer.

(iii) In such circumstances, therefore, the Court has to be alive to the fact that the contract between State and such employees is often akin to a contract between a lion and a lamb. Such a contract cannot be enforced. It is *ex facie* unconstitutional, as it is vitiated by unequal bargaining power, with the hapless employees left with no option but to accept employment on the terms dictated to them. Such terms can be invalidated by the Court. In such cases, the Constitutional Courts must invariably tilt in favour of protecting the lamb.

(iv) The terms and conditions set out in the contract of appointment are, therefore, not relevant while adjudicating on the employees' claim to regularisation, as they are terms and conditions which are nearly invariably thrust on the employees, with no bargaining power on the employee to resist the imposition of such terms and conditions.

(v) The long time discharge of duties on the contractual post, by the employees, results in a legitimate expectation, on their part, that they would be regularised, especially where

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confidence in their performance was expressed by granting them monetary upgrades and extensions of tenure. In such cases, the employees cannot be treated as having become, after a long period of time, undesirable or surplus.

(vi) Having extracted dedicated service from them for a long period of time, the employees cannot be left in the lurch to fend for themselves, particularly where, owing to their advanced age, no further employment opportunities are available to them.

(vii) No rational basis was disclosed by the State, to discontinue the services of the appellants after they had rendered 10 years of continuous service to the State.

(viii) The practice of using labels like "part-time", "contractual", and "temporary" in perpetuity was deprecated. The State had to realize that part-time employees like the appellants constituted an integral part of the edifice on which the State machinery continued to function.

(ix) The judgment in ***Uma Devi*** could not be used as a shield to legitimize exploitative engagements continued for years without regular recruitment.

(x) The Supreme Court also castigated the practice of outsourcing or informalizing recruitment as a means to evade regular employment obligations.

(xi) Abrupt discontinuance of long-standing engagement of the appellants, solely on the basis of their contractual

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nomenclature without any cogent reasons for discontinuing their employment or any speaking order in that regard, was manifestly arbitrary and violative of Articles 14 and 16 of the Constitution of India.

37.5 On the basis of the above reasoning, the Supreme Court directed that the appellants be regularized against the posts against which they were contractually appointed, with consequential service benefits from the date of the judgment.

38 ***Pawan Kumar***

38.1 The appellants in this case had registered themselves with the employment exchange and were working as casual workers in the office of the Commissioner of Income Tax, Gwalior. They approached the Tribunal for regularization of their services. The Tribunal held that, as the appellants did not fulfill the basic criteria for regular service of 10 years as on 10 April 2006, in terms of the judgment of the Supreme Court in ***Uma Devi***, they were not entitled to regularization. The writ petitions, preferred by the appellants, were dismissed by the High Court. The appellants, therefore, approached the Supreme Court.

38.2 Before the Supreme Court, it was contended by the appellants that they had been engaged as casual workers in 1993, 1997, and 1998, after sponsorship by the employment exchange and after being duly interviewed. Having extracted services from them for over two decades, the Income Tax Department proceeded, by circulars dated 4

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July 2011 and 10 January 2012, to outsource the work being done by the appellants. The appellants represented against this decision, seeking regularization, but their representations were rejected.

38.3 The Income Tax authorities contended before the Supreme Court, *per contra,* that, as the appellants had not rendered continuous service of 10 years or more as on 10 April 2006, as required by ***Uma Devi***, they were not entitled to regularization. It was further submitted that there were no sanctioned posts available at Gwalior against which their services could be regularized. Their engagement was purely casual and, thereafter, through a contractor on contract basis.

38.4 The Supreme Court held in favor of the appellants on two grounds.

38.5 The first, which is not of particular relevance for us, is the fact that other persons, similarly situated, had already been regularized.

38.6 The Supreme Court has, however, also relied, as a ground for its judgment, on the precedent in ***Jaggo***. We may, in this context, reproduce paras 9 and 10 of the report in ***Pawan Kumar,*** thus:

> "9. Besides the aforesaid aspects, we find that the law laid down by this Court in ***Jaggo (supra)*** supports the case of the appellants in their prayer for regularization. In paragraphs 13, 20, 21 and 26, it has been held as under:
>
> > "13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled.

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It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

20. It is well established that the decision in ***Uma Devi (supra)*** does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in ***Vinod Kumar v. Union of India***, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by 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)***

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> 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.

> 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."

10. The aforesaid observations are sufficient to hold that the Tribunal was not justified in denying relief to the appellants by relying upon the decision in ***Umadevi (supra)***. The High Court also

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> erred in affirming the decision of the Tribunal. The appellants are entitled to similar reliefs as granted by this Court in ***Ravi Verma (supra)***[26] as well as in ***Raman Kumar (supra)***[27].”

38.7 ***Jaggo***, therefore, stands affirmatively approved and applied by a Coordinate Bench of the Supreme Court in ***Pawan Kumar***.

39. *Sukhendu Bhattacharjee*

39.1 This decision commenced with the following trenchant observations, in para 2, of the report, thus:

> “2. In matters concerning long-standing administrative arrangements, particularly where the State and its instrumentalities, over time, continue to utilize the services of certain categories of workers in the discharge of its functions, Courts are often required to examine whether executive action conforms to constitutional standards of fairness and consistency. The exercise of public power cannot be divorced from practical realities created by sustained governmental reliance on such workers. Where governmental authorities derive the benefit of prolonged service and thereafter adopt positions that appear inconsistent with earlier policies or representations, the scrutiny of the Court is directed not merely at the outcome, but at the manner in which discretion has been exercised. The touchstone remains whether the action of the State is reasoned, non-arbitrary and in harmony with the constitutional mandate. It is within this broader constitutional perspective that the present issues fall for consideration.”

39.2 The dispute before the Supreme Court dealt with the claim of regularization by muster roll workers who had been engaged by the State of Assam in various departments of the State of Assam since 1980. Having failed to obtain succour at the level of the High Court, the employees approached the Supreme Court in appeal.

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[26] **Ravi Verma v. Union of India, 2018 SCC OnLine SC 3860**

[27] Civil Appeal No. 4146 of 2023

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39.3 Para 34 of the report sets out the grounds on which the Division Bench of the High Court held against the appellants:

> "34. The Division Bench *vide* impugned judgment dated 8th June, 2017 allowed the writ appeal and set aside the order of the learned Single Judge. Some of the key observations made by the Division Bench in the impugned judgment are summarized hereinbelow:—
>
> i. None of the writ petitioners were appointed against, or were working on, duly sanctioned vacant posts. Their engagement as Muster Roll, Work Charged or Casual workers was de hors the regular cadre. In view of ***Umadevi*** (supra), regularization is impermissible where employees are not working against sanctioned posts, except within the narrow exception.
>
> ii. Exception under paragraph 53 of *Umadevi* (supra), as explained in *M.L. Kesari* (supra) applies only to irregular and not illegal appointments of duly qualified persons working against sanctioned posts for more than ten years without any Court's protection. Since the writ petitioners were never appointed against sanctioned posts, they did not satisfy the threshold condition for invoking the one-time regularization exception.
>
> iii. Although the State had taken a Cabinet decision on 22nd July, 2005 and regularized about 30,000 similarly placed workers, post 10th, April 2006 [date of judgment in *Umadevi* (supra)], the State could not continue or extend regularization by creating posts, as that would amount to bypassing the constitutional requirement of public employment. The Cabinet decision could not be enforced contrary to binding constitutional law."

39.4 In its analysis, the Supreme Court, in para 54, set out the "core question" arising before it as being "whether, in the aforesaid circumstances, the appellants can be denied the benefit of regularization *solely on the ground that they were not appointed against sanctioned posts* and that the decision in ***Uma Devi*** prohibits such regularization". This judgment, therefore, is of significance as it also deals with the entitlement of employees to regularization, where

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their services had been extracted for long periods of time but their appointments were not against sanctioned posts.

39.5 The plea of the State that the appointments, not having made against sanctioned posts, the appellants had no right to regularization, as negatived by the Supreme Court in para 73 of the report, thus:

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

39.6 The Supreme Court, thereafter, reproduced various paragraphs from the decisions in ***Jaggo*** and ***Bhola Nath,*** and concluded its discussion, thus:

> "76. What emerges from the principles enunciated in the aforesaid decisions is that the State cannot rely upon the mere form of engagement to deny fair and equitable treatment to employees who have served it for long years. The consistent thread running through these judgments is that *Umadevi* (supra) cannot be invoked as a blanket barrier to justify prolonged and continued engagements of a temporary or ad hoc nature, especially where the employees have been discharging essential and recurring functions of the State. The Court has repeatedly emphasised that the distinction between "illegal" and "irregular" appointments must be kept in view, that long and continuous service is a relevant consideration, and that the State, as a model employer, is under a constitutional obligation to act with fairness, consistency and reasonableness. The practice of retaining employees for decades under deceptively titled designations, while simultaneously extracting regular work integral to the administration, has been disapproved consistently.
>
> 77. Applying these principles to the present case, it is evident

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

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

39.7 The judgment ends with the following conclusion, in para 79:

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

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

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

III. Upon regularization, the appellants shall be entitled

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to all consequential benefits, including fixation of pay in the regular scale, continuity of service, and all applicable pensionary and post-retiral benefits in the same terms, as were extended to similarly situated 30,000 employees.

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

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

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

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

39.8 The takeaway

While the principles enunciated in ***Sukhendu Bhattacharjee*** are largely the same as those in the long line of authorities already noted earlier in this judgment, starting with ***Vinod Kumar***, they merit reproduction, yet again, thus:

(i) The State cannot rely on the form of the engagement of employees so as to deny fair and equitable treatment to them, having extracted services from them for long periods of time.

(ii) ***Uma Devi*** cannot be invoked as a shield to justify prolonged and continued engagements of temporary or *ad hoc*

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nature, especially where the services rendered by the employees are essential and recurring functions of the State. In such a case, the State has a constitutional obligation, as a model employer, to act with fairness, consistency, and reasonableness.

(iii) There was consistent judicial disapproval of "the practice of retaining employees for decades under deceptively titled designations, while simultaneously extracting regular work integral to the administration".

(iv) The appellants before the Supreme Court had not been engaged for sporadic or seasonal purposes. They were taken on muster rolls and had rendered continuous service for decades in departments performing regular governmental functions.

(v) The State had itself acknowledged this by framing a cabinet policy to regularize similarly situated workers. In such circumstances, the appellants could not be denied their right to regularization by adopting a rigid reading of ***Uma Devi***.

(vi) Again, in such circumstances, the plea that the appellants had not been initially appointed against duly sanctioned posts could not be accepted.

(vii) Such a stand was unconscionable, after the State had engaged the appellants and utilized their services continuously for decades. In the absence of any cogent reason for not continuing their services, the act of the State in doing so was manifestly arbitrary and inconsistent with its obligation to

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function as a model employer. Such an act could not withstand the scrutiny of Articles 14 and 16 of the Constitution of India.

39.9 Following the above reasoning, the Supreme Court issued the directions already reproduced in para 79 of the report *supra*.

40 *Rupesh R. Gaonkar*

40.1 The appellants before the Supreme Court in this case were engaged as workmen belonging to the unskilled, semi-skilled, skilled and highly-skilled categories, by private contractors executing works for the Public Works Department[28] of the Government of Goa between 1967 and 2003. The PWD issued an order granting the appellants temporary status and recognizing their entitlement to be absorbed in the establishment of the PWD as and when vacancies arose. As no action was taken on this decision, the appellants approached the High Court, which, by judgment dated 28 July 2023, non-suited the appellants on the ground that the decision of the PWD had not received the concurrence of the Government. The appellants were, however, granted liberty to participate in future selection processes with sympathetic consideration for age relaxation.

40.2 Aggrieved thereby, the appellants approached the Supreme Court.

40.3 We deem it appropriate to reproduce, from the report, the following paragraphs:

[28] "PWD" hereinafter

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"20. It is also pertinent to note that it is not the case of the respondent-State that the appellants were employees of an independent non-governmental organisation, or that the Public Works Department had merely outsourced its work to such an entity. The consistent stand of the State has been that the appellants were initially engaged through private contractors and thereafter continued to work through the PWD Labour Supply Society. Throughout, the appellants rendered services for the Public Works Department. The real controversy, therefore, is not whether the State derived the benefit of their services, but whether, after availing those services continuously over a long period and thereafter conferring temporary status upon them, the State can legitimately deny them consideration for absorption in accordance with its own policy decisions.

21. The intention of the State, in matters such as the present, is not to be gathered from any single document read in isolation, but from the totality of its conduct over a sustained period of time. Viewed thus, the decisions of 27.07.2012 and 04.12.2013, the constitution of a Committee to categorise and assess the suitability of the members of the Society, the freeze recommended on direct recruitment pending regularisation, grant of temporary status with parity of pay and emoluments as on 01.04.2013, and, finally, the order dated 07.02.2014 recording the Government's sanction and the entitlement of the members to absorption as and when vacancies arise, each of these steps, taken cumulatively, permits of only one reasonable inference that the State intended, and continues to require, the services of the appellants and also to confer benefits. This act of the State does not indicate that at any stage before the matter reached the High Court, the State did not intend to or take away conscious decision as to regularise their services.

22. *Once the State has taken the definite and considered step of conferring "temporary status" upon a class of workers, with equal pay for equal work, and parity with regular employees in other emoluments, the only logical conclusion that can follow is that the State itself regarded the services of such workers as necessary, and their work as equivalent in value and quality to that rendered by its regular employees. Temporary status, so conferred after a structured administrative exercise involving Cabinet decisions, categorisation, and assessment of suitability, is not to be treated as an empty administrative label devoid of legal consequence. It is the outward manifestation of the State's own considered intention to absorb the workers.*

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25. *The grant of temporary status in the year 2014 is, in our view, itself the surest indicator that the services of the appellants were, and continue to be, required by the State. More than a decade has since elapsed. During this period, the appellants have continued to render service in the establishments of the PWD, discharging duties indistinguishable from those performed by regularly appointed employees. It would, in these circumstances, be manifestly unfair to deny the appellants the benefit of regularisation at this distance of time, on the ground that their initial engagement suffered from some procedural infirmity for which they bore no responsibility whatsoever.*

26. *It requires to be emphasised that the appellants are not persons possessing rare or highly specialised skills who might, without undue difficulty, seek and obtain alternative avenues of livelihood, or who could realistically be expected to compete afresh, at this stage of their working lives, in an open and general selection. They are workers drawn predominantly from the unskilled, semi-skilled and skilled categories, engaged on a contractual basis by the State's own instrumentality, who have rendered long and continuous service, several of them for well over a decade and a half, and some for periods extending over decades. To deny regularisation to such workers, after having taken the benefit of their labour for so long, is itself symptomatic of the very exploitation that the Society was constituted to prevent, and cannot be countenanced by a constitutional court.*

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28. In ***Distt. Bar Assn., Bandipora (supra)***[29], this Court has held in terms that ***Umadevi (supra)*** does not denude the State or its instrumentalities from framing a scheme for regularisation. Consequently, it is not authority for the proposition that the executive cannot frame a policy of regularisation for its long-serving temporary employees. *In* ***Sheo Narain Nagar (supra)***[30], *this Court deprecated the practice of States denying long-serving workmen the benefit of regularisation by taking recourse to a mechanical reading of* ***Umadevi (supra)***.

29. *More recently, this Court, in* ***Jaggo v. Union of India****, underscored whether the duties performed by long-serving temporary employees are integral to the day-to-day functioning of the organisation concerned, clarifying that* ***Umadevi (supra)*** *was directed against illegal backdoor appointments, and was never intended to penalise employees who, though irregularly engaged,*

[29] **State of J & K v. Distt. Bar Association, Bandipora, (2017) 3 SCC 410**
[30] **Sheo Narain Nagar v. State of U.P., (2018) 13 SCC 432**

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have rendered long service in essential, perennial roles. This Court has further, in ***Vinod Kumar v. Union of India*** *and* ***Shripal v. Nagar Nigam, Ghaziabad****, cautioned against a mechanical and blind reliance on* ***Umadevi (supra)*** *to deny regularisation to temporary employees, holding that* ***Umadevi (supra)*** *cannot be employed as a shield to legitimise exploitative engagements continued for years together without the employer undertaking legitimate recruitment. This body of precedent, distinguishing and refining* ***Umadevi (supra)*** *rather than displacing it, squarely governs the facts of the present case.* In ***Shripal v. Nagar Nigam***, this Court has held as follows:

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30. *Tested on the touchstone of this line of authority, the present is manifestly a case falling within, and not outside, the one-time measure contemplated by paragraph 53 of* ***Umadevi (supra)*** *itself, which recognises that irregular, as distinct from illegal appointments of duly qualified persons, continued for ten years or more without the intervention of any court order, may be regularised on a one-time basis. The appellants' engagement was not the product of a clandestine or illegal backdoor entry; it was the outcome of a structured process, constitution of a Society by the State, a Cabinet-approved categorisation exercise, and the grant of temporary status undertaken by the State itself, with full knowledge and active participation of its highest executive authorities, including the Chief Minister and the concerned Minister.*

31. In view of the above, we find that the High Court fell into error in treating the appellants' engagement as vitiated at the threshold for want of due process while, in the very same breath, observing in paragraph 53 of the impugned judgment that, save for regularisation, the appellants had been treated at par with their counterparts in the regular establishment by the grant of temporary status together with parity in pay and emoluments. These two findings sit uneasily with one another. *The grant of temporary status was preceded by a process of scrutiny and categorisation undertaken at the instance of the State itself, and reflects a conscious governmental decision that the appellants should continue to discharge the functions assigned to the respective posts. It also demonstrates that the State did not regard the appellants as lacking the requisite eligibility to continue in service. In such circumstances, the principal irregularity, if any, lay in the manner of their initial engagement rather than in any subsequent recognition of their utility or eligibility by the State.* It is this distinction that paragraph 53 of ***Umadevi (supra)*** requires the Court to keep in view while considering claims for one-time

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regularisation.

32. As regards the plea that the order dated 07.02.2014 lacked the concurrence of the Finance Department and the requisite approvals under the Rules of Business, we are of the view that this objection, even assuming it exists, is not available to the respondent-State at this belated stage. The said order was placed before the High Court on 09.04.2014 and formed the basis on which Writ Petition No. 307 of 2006 came to be disposed of upon the statement made by the learned Advocate General. Thereafter, the State continued to avail itself of the services of the appellants, extended to them temporary status and even forwarded their representation dated 23.11.2018 for consideration by the High-Level Empowered Committee by communication dated 30.11.2018, without raising the objection that the order dated 07.02.2014 lacked the requisite concurrence or approval. In these circumstances, the State cannot now be permitted to rely upon its own alleged procedural deficiency to defeat the legitimate expectation generated by its consistent conduct over a prolonged period. Such a course is inconsistent with the obligation of the State to act as a model employer, a principle repeatedly emphasised by this Court.

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34. The apprehension voiced on behalf of the State, that regularising the appellants would open the floodgates to similar claims by other contractual workers across the State cannot by itself defeat a case that is otherwise made out on facts, particularly where, as here, relief is confined strictly to the appellants before this Court and is not extended as a matter of general policy to workers who are not parties to these proceedings. The floodgates concern in ***Umadevi (supra)*** was addressed to the indiscriminate regularisation of illegal appointments at large; it was never intended to shut the door on a case-specific, one-time measure confined to identified and named claimants whose facts have been fully examined by the Court."

40.4 The judgment concludes thus:

"36. In the result and for the foregoing reasons, the appeal is allowed, and we direct as follows:

(i) The judgment and final order dated 28.07.2023 passed by the High Court of Bombay at Goa in Writ Petition No. 95 of 2021, along with the connected Writ Petition No. 147 of 2021, is set aside.

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(ii) The appellants are held entitled to regularisation of their services in the establishment of the Public Works Department, Government of Goa, in the posts/categories to which they were assigned pursuant to the categorisation exercise undertaken by the State in 2013 and given temporary status.

(iii) The respondent-State shall, within a period of four months from today, frame an appropriate scheme to give effect to the regularisation directed herein. The scheme so framed shall be strictly limited to, and shall enure only for the benefit of, the members of the society who were members of the society at the time of institution of the writ petition, WP(C) No. 95 of 2001 on 09.02.2021, and shall not be treated as a precedent for, or extended to, any other worker who were not members of the society on the date of the filing of the writ petition on 09.02.2021.

(iv) In the event sufficient sanctioned vacant posts are not presently available to accommodate all the appellants/workers as mentioned above, the respondent-State shall create supernumerary posts, on a one-to-one basis, to the extent necessary to absorb the appellants/workers. Such supernumerary posts shall be personal to the appellants concerned, shall stand automatically abolished upon the retirement, resignation, death or cessation of service of the incumbent appellant/workers, and shall not enure for the benefit of any successor or be treated as a sanctioned addition to the regular cadre strength for any other purpose.

(v) The appellants/workers shall be deemed to have been regularised in service with effect from 09.02.2021, being the date of institution of Writ Petition No. 95 of 2021, the first writ proceeding instituted by the appellants/workers in their own right, and shall be entitled to all consequential and attendant benefits of regularisation, including seniority and pensionary and retiral benefits, reckoned with effect from the said date.

(vi) Notwithstanding clause (v) above, monetary arrears of pay and allowances consequent upon such regularisation shall not be payable for any period prior to the date of this judgment."

40.5 The takeaway

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This judgment, therefore, once again reiterates and reaffirms the principles laid down in ***Vinod Kumar***, ***Jaggo***, ***Shripal*** and similar decisions. The following principles emanate from this decision:

(i) The fact that the State had granted temporary status to the appellants and granted them parity with regular employees and other emoluments indicated that the State itself regarded the services of the appellants as necessary and their work as equivalent in value and quality to that rendered by its regular employees. Conferment of temporary status, after a structured administrative exercise involving cabinet decisions, could not be treated as an empty administrative label devoid of legal consequence. It reflected the outward manifestation of the State's own considered intention to absorb the workers. The grant of temporary status was, therefore, the surest indicator that the services of the appellants were continued to be required by the State.

(ii) Since the grant of temporary status, more than a decade had elapsed, during which period the appellants had continued to render services to the PWD, discharging duties indistinguishable from those performed by regularly appointed employees.

(iii) In such circumstances, it was manifestly unfair to deny the appellants regularization on the ground that their initial engagement suffered from some procedural infirmity for which no response could be cast on the appellants.

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(iv) It was also unrealistic to expect the appellants, at this distance of time, to compete afresh in an open and general selection.

(v) Having rendered long and continuous service, the appellants were entitled to regularization, and failure to regularize their services was symptomatic of the very exploitation that the State was constituted to prevent, which could not be countenanced by a constitutional Court.

41 *Om Prakash Gaur v. Delhi Technological University*[31]

A Coordinate Bench of this Court has, in ***Om Prakash Gaur***, speaking through Hon'ble the Chief Justice (as he then was), followed the decision in ***Pawan Sharma.*** The relevant paragraphs from the decision of the Coordinate Bench in ***Om Prakash Gaur*** may be reproduced thus:

> "24. A Division Bench of this Court in ***Pawan Sharma*** (supra), referring to ***Jaggo*** (supra), ***Shripal*** (supra) and ***Dharam Singh*** (supra) has held that in the said case since the employees were selected by a process which mirrors regular recruitment and they had worked continuously for several years and have been performing duties essential for the establishment or organisation, hence they were entitled to be regularised. It is to be noticed that in ***Pawan Sharma*** (supra) as well the advertisement pursuant to which the employees were initially engaged was for a walk-in interview only, as is the case with the employees in these two appeals. Para 15 of the report in ***Pawan Sharma*** (supra) is extracted herein below:
>
> > "15. To our mind, the present petitions stand covered on facts by the decision in ***Vinod Kumar***, ***Jaggo***, ***Shripal*** and

[31] **2026 SCC OnLine Del 6224**

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Dharam Singh. We have already set out the propositions emerging from the said decisions, and do not deem it necessary to repeat them in extenso. However, some principles, which are dispositive of the petitions before us, may be enumerated:

(i) If

(a) the employees are selected by a process which mirrors regular recruitment, by holding selections and interviews,

(b) they have worked continuously for several years, and

(c) they are performing duties essential for the establishment or organization, they are entitled to regularization.

(ii) The right to regularization, thus earned, is substantive in nature.

(iii) In such cases, the initial label under which they were recruited, whether part-time, or contractual, or casual, or ad hoc, or temporary, would not matter.

(iv) However, the appointment must not be illegal, mala fide, surreptitious, or "back door".

(v) In such circumstances, it is not open to the respondents to contend that the posts occupied by the employees were not regular posts. The recurrent nature of the duties performed by the employees necessitated the classification of the posts as regular, irrespective the original label under which the employees may have been appointed. The initial temporary, ad hoc, contractual, or casual, nature of their employment stood transformed, in such cases, "into a scenario demanding fair regularization".

(vi) The right to regularization would enure, in such cases, even if the posts against which the employees were appointed were not sanctioned posts - though, in the present case, the posts against which the petitioners were appointed were sanctioned."

25. The Division Bench in ***Pawan Sharma (supra)***, has also held that the right of regularisation in such cases would accrue even if the posts against which the employees were initially appointed were not sanctioned posts. The final direction issued

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in ***Pawan Sharma (supra)*** by the Division Bench of this Court is as under:

> *"22. The petitioners are, therefore, directed to be regularized against the posts on which they were originally appointed, irrespective of the labels governing such appointment. They would be entitled to fixation of pay treating them as having been regularly appointed ab initio. They shall also be entitled to all other benefits which would follow, except for back wages."*

26. In view of the detailed discussion of the entire law regarding entitlement of regularisation of a contractual/ad-hoc/temporary employee made by the coordinate Bench of this Court in ***Pawan Sharma (supra)***, we are of the opinion that having regard to the facts of the instant case as well, the employees are entitled to be considered for regularisation of their services. Their long continuance of service with the University clearly indicates that ever since their initial appointment they have been performing functions and duties, the requirement of which is perennial and accordingly, they are entitled to be regularised in service.

27. The judgment of the Division Bench of this Court in ***Pawan Sharma (supra)***, was challenged in Civil Appeal No. 7837/2026, which had arisen out of SLP (C) No. 17550/2026. The said Civil Appeal, *vide* order dated 14-5-2026 passed by the Supreme Court, has been disposed of, maintaining the order of this Court with a clarification that the employees to be regularised pursuant to the order of this Court shall be placed below those employees who were regularly appointed candidates in the order of seniority. The directions issued for regularising the services of the employees in ***Pawan Sharma*** (supra) were, thus, maintained by the Supreme Court."

42. <u>The cumulative takeaway</u>

A cumulative study of these decisions reveals the following principles as emerging therefrom:

(i) The initial terms of employment, as contained in the order of appointment issued to the employee concerned, are largely irrelevant. Even if, therefore, the initial letter of

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appointment states that the appointment is temporary, part-time, ad hoc, contractual or casual, or that it would not confer any right to regularisation, that does not impact, to any meaningful extent, the employees' right to claim regularisation. This is because of the vastly unequal bargaining power of the establishment of the employee in such cases in which an employee is constrained to accept the terms of employment as handed over to him. The contract is, therefore, like one between a lion and a lamb. Courts which are constitutionally sensitised have, in such cases, to tilt in favour of the lamb, rather than the lion. Exploitative covenants in such contracts of employment, arising from the unequal bargaining power of the employee, vis-à-vis the establishment, can be ignored and even invalidated by the Court.

(ii) What matters, therefore, in such cases, while evaluating the right of the employee to regularisation, is the "essence of employment". Where the employee has served the establishment for a long period of time, without blemish, uninterruptedly (artificial breaks being ignored), that very fact entitles the employee to regularisation.

(iii) The extraction of work from the employee, over a long period of time, belies any contention, on the part of the establishment, that the nature of duties discharged by the employee are not essential or perennial.

(iv) The nature of duties performed by the employee is also,

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however, relevant. Where the duties performed by the employee are integral to the functioning of the institution concerned, or indistinguishable from the duties performed by "regularly appointed" staff, they are *ipso facto* essential. The essential nature of the duties performed by such employees would also be reflected from the fact that the employer did not engage other personal to perform the same tasks.

(v) Outsourcing of the same work to private agencies, again, was reflective of the essential nature of the duties performed. Such belated outsourcing could never be cited as a ground to oppose the employee's claim to regularisation.

(vi) The right to regularisation would also depend on the employment of the employee being pursuant to a process which involves open selection, with others, or mirrors regular recruitment. In such a case, non-compliance with procedural formalities at the time of employment would not derogate from the right of the employee to regularisation. Even if the appointments were not made strictly in accordance with prescribed rules and procedures, they could not be treated as illegal, if they were after written examinations and interviews. The distinction between "illegal" and "irregular" appointments, as drawn even in the in ***Uma Devi*** is, in this context, significant.

(vii) In such a case, it was not open to the establishment to contend that the employee did not possess the requisite educational qualifications, as prescribed for regular recruitment.

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(viii) The employee, in such cases, was not required to establish that he had completed 240 days of continuous service in any year.

(ix) The right to regularisation, in such cases, could not be contested on the ground that there was any ban on regular recruitment.

(x) Arbitrary termination of such employees, without cause or notice, undermines the principles of natural justice and subjects the employees to a state of constant insecurity, regardless of the quality or duration of their service. Having extracted dedicated service from the employee for a long period of time, the establishment could not leave the employee in the lurch to fend for himself especially when, owing to the advancement in the age of the employee, no employment opportunity is available any more.

(xi) "Outsourcing" is a pernicious practice adopted to deny employee his right to regularisation and enable substitution of one set of outsourced employees by another. This perpetuates exploitation and demonstrates a deliberate effort to bypass the constitutional obligation to offer regular employment.

(xii) In ***Dharam Singh***, the Supreme Court went the extent of directing the executive authorities to sanction posts and regularise the employees against such posts. In specific case, therefore, the Court could even issue such directions, where, after extracting work from employees, treating them as casual,

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contractual, ad hoc or temporary, the establishment was seeking to deny them regular employment on the ground that there were no sanctioned vacancies available. In such a case, the principle that creation of posts was essentially a function of the executive, and could not be directed by the Court, would not apply.

(xiii) It was also not open to the establishment to contend, as a defence against the claim to regularisation, that the employee was continuing on the post held by him pursuant to interim orders passed by Courts. The passing of such an interim order was, in fact, itself reflective of the merits of the employee's claim for regularisation.

(xiv) The Court was required, in such cases, to approach the issue with the necessary sensitivity. It could not adopt a mechanical approach of application of precedents, without engaging with the core constitutional issues at hand, thereby reducing the dispute to one of acceptance of contractual terms. Such an approach was specifically deprecated by the Supreme Court in ***Bhola Nath***.

(xv) The obligation of the State to regularise the employee, in such cases, arises from the constitutional imperative that it acts with high probity, fairness and candour, and owes a social responsibility to treat its employees in a manner which preserves their dignity. The State cannot be permitted to exploit its employees or take advantage of their vulnerability, helplessness or unequal bargaining position. The obligation of

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the State, to act as a model employer, brooks no exception.

(xvi) The entitlement of the employee to regularisation also flows from the principle of legitimate expectation. Longtime discharge of duties on the post, especially where, in the interregnum, the employee's tenure was extended, or the employee was granted enhancement in salary or promotion, would result in a legitimate expectation, on the part of the employee, that he would be regularised. Such an employee could not, therefore, after a long period of time, be regarded as undesirable or surplus.

(xvii) The framing of a policy to regularise similarly situated workers, again, is reflective of the essential nature of the duties performed by the employee, and in need, by the establishment or organisation, of such duties.

(xviii) If the employee was granted temporary status, that, again, would be reflective of the fact that his duties were essential to the functioning of the establishment, and would be a sure indicator that the establishment required his services. It would also reflect the outward manifestation of the establishment's intention to absorb the employee.

(xix) It was also unconscionable, on the part of the establishment of the State, after having extracted work from employees for decades long periods of time, to call upon them to compete with freshers for regular recruitment, or subject themselves to an open and general selection.

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(xx) However, no right to regularisation enures in favour of a "back door" appointee, who is employed for ulterior considerations. ***Uma Devi*** precisely intended to curb this practice, but was being weaponised to deny long serving employees the right to regularisation, which was never the intent of the Court.

43. Applying these principles

43.1 Little remains to be discussed. When these principles are applied to the facts before us, the entitlement of the appellants to regularisation becomes *ipso facto* apparent. They are not back door appointees, employed for any ulterior consideration or by corrupt motives. They participated in written examinations and interviews before they were employed. They have served the respondents for long periods, close on two decades, before it was decided not to extend their services any further. Their services have been without blemish. The nature of the duties rendered by them, which is teaching of Punjabi, is part of the core and essential duties performed in the schools run by the DoE. They were adjusted, as full-time teachers, against available vacancies.

43.2 In such circumstances, it could not be said that the appellants were not the employees of the DoE, or the GNCTD. The appellants are correct in the reliance on the order dated 20 June 2008, whereby the appellants were appointed as full-time TGTs, which indicates that their salary, and terms of employment, were also determined by the

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GNCTD. We agree with Mr. Bharadwaj in his contention that, irrespective of the original nature of the appellants' employment, which the passage of time, they have become entitled to be treated as employees of the DoE. It is not in dispute that the funds, from which the appellants were dispersed their salaries, were also sourced from the DoE and the GNCTD, even if they were paid to the appellants by the Punjabi Academy.

43.3 In any event, given the march of the law following ***Vinod Kumar*** and ***Jaggo***, the right of the appellants to regularisation cannot be contested. The grounds on which the learned Single Judge has rejected the appellants' claim, which are premised essentially on the decision in ***Uma Devi***, can no longer hold water, after ***Uma Devi*** has been explained, and re-explained, in the line of authorities following ***Vinod Kumar***.

43.4 The impugned, to the extent it rejects the appellants claim to regularisation cannot, therefore, be sustained.

44. Once we have directed regularisation of the appellants, it would be unconstitutional to distinguish between them and regular TGTs, in the matter of pay. The appellants would, therefore, be entitled to the same pay as was being paid to regular TGTs by the DoE, discharging the duties which were being performed by the appellants. We, however, direct that the actual benefit of regular pay would enure from the date of this judgment, though the appellants would be entitled to have their pay fixed as though they had been continuing on regular basis all through. In other words, we are not inclined to grant

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arrears of pay to the appellate, between the amounts paid to them and the pay drawn by regular TGTs.

F. Conclusion

45. The present appeal is, therefore, partly allowed, in the following terms:

(i) The impugned judgment, to the extent it rejects the appellants claim to regularisation on the posts held by them, is quashed and set aside.

(ii) The appellants' claim to regularisation is, therefore, upheld.

(iii) Consequential benefits would follow. In case the appellants are no longer in service, they would be reinstated on the posts which were held by them. In view of the fact that the Supreme Court has deprecated termination of the services of such employees as unconstitutional, they would also be entitled to back wages for the period they have not been permitted to serve, on the basis of the wages which were being paid to them. The fixation of their pay would be undertaken assuming that they continued in service on the posts held by them. With effect from the date of this judgment, however, the appellants would be entitled to be paid the salary of regular TGTs.

(iv) In case the appellants have crossed the age of

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superannuation, their terminal and retiral benefits would be computed, treating them as having superannuated as regular employees and fixing their pay as if they were in continuous employment on regular basis.

(v) We are not inclined, however, to grant arrears of salary to the appellant, prior to the rendition of this judgment, between the pay which was paid to them and the salary drawn by regular TGTs, as that may involve consideration of factors regarding which the averments in the writ petitions filed by the appellants may be insufficient. The entitlement of the appellants to the pay/pensionary benefits paid to regular TGTs would, therefore, for the present, be prospective from the date of this judgment. We, however, preserve the liberty granted by the learned Single Judge to the appellants to separately agitate their claim for parity in pay by distinct proceedings, if so advised.

(vi) The appellants would not, however, be entitled to claim seniority over any person who might have been regularly recruited as TGT during the period of contractual engagement of the appellants.

(vii) Compliance with this judgment would be ensured, by the DOE/GNCTD, within a period of 12 weeks from its pronouncement.

46. This would apply, *mutatis mutandis*, to LPA 937 of 2013 as well.

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47. Both LPAs stand disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

NOVEMBER 23, 2026*/aky/dsn/*AR

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