AFR

ORISSA HIGH COURT : CUTTACK

W.P.(C) No.2846 of 2023

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

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1. Rabindra Nath Barik
Aged about 57 years
Son of Gandharba Barik
A permanent resident of Shabjamul
P.O.: Sabhamula, P.S.: Jagatsinghpur
District: Jagatsinghpur
Presently working as Peon
At: Divisional Office, O.S.P.H. & W.C.
Bhawanipatana Division
At: ITI Road, Bhawanipatana
District: Bhawanipatana.

2. Trilochan Madhual
Aged about 59 years
Son of Late Narendra Moharana
A permanent resident of
At/P.O.: Baratani, P.S.: Aul
District: Kendrapara
Presently working as Orderly
In Odisha State Police Housing &
Welfare Corporation Limited, Head Office
Bhubaneswar - 22.

3. Pramod Kumar Jena
Aged about 57 years
Son of Jambesh Kumar Jena

At: Khasipur, P.O.: Gadaruspa
P.S.: Gop, District:Puri
Presently working as Orderly Peon
In Odisha State Police Housing &
Welfare Corporation Limited
Head Office, Bhubaneswar - 22.

4. Prasant Kumar Behera
Aged about 51 years
Son of Nakula Behera
At/P.O.: Bilasuni, P.S.: Govindpur
District: Cuttack
Presently working as Watchman
In Odisha State Police Housing &
Welfare Corporation Limited,
Head Office, Bhubaneswar - 22.

5. Kartik Ch. Swain
Aged about 53 years
Son of Hanuman Swain
At/P.O.: Santhapur, P.S.: Gondia
District: Dhenkanal
Presently working as Orderly Peon Watchman
In Divisional Office
Odisha State Police Housing &
Welfare Corporation Limited
Balasore, At/P.O.: Kalidaspur
District: Balasore.

6. Maheswar Behera
Aged about 55 years
Son of Gopi Behera
At/P.O.: Takarada, P.S.: Takarada
District: Ganjam
Working as Orderly Peon
In Divisional Office

Odisha State Public Housing &
Welfare Corporation Limited
Sambalpur Division
At: Dehuri Palli, P.O.: Budharaja
District: Sambalpur.

7. Bhim Bahadur Ale
Aged about 64 years
Son of Dalabahadur Ale
At: Dal Bhanjyang
P.O.: Batashy Khapani
P.S.: Gorkha
District: P-2 No. Nepal. … Petitioners

-VERSUS-

1. State of Odisha
Represented through
Principal Secretary to Government
Home Department, Odisha Secretariat
Bhubaneswar, District-Khurda.

2. Chairman-cum-Managing Director
Odisha State Police Housing &
Welfare Corporation Limited
At: Janapath, Bhoi Nagar
Bhubaneswar-22
District: Khordha.

3. Director General & Inspector General of Police
At: Cantonment Road
Buxi Bazar, Town/District: Cuttack.

4. Additional Secretary to Government
Department of Public Enterprises
Government of Odisha

Odisha Secretariat, New Capital
Bhubaneswar
District: Khordha. ... Opposite parties

Counsel appeared for the parties:

For the Petitioners	:	Mr. Subir Palit, Senior Advocate along with Ms. Ananya Pradhan, Advocate
For the Opposite party Nos.1, 3 & 4	:	Ms. Saswata Pattnaik, Additional Government Advocate
For the Opposite party No.2	:	M/s. Girija Prasanna Dutta, Kaibalya Manichandan Bhuyan, Advocates

P R E S E N T:

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 05.10.2024 :: Date of Judgment : 13.03.2025

JUDGMENT

Challenging the Office Order No.E-38/06/3489/ OPHWC, dated 12.05.2010 and Office Order No.E-31/ 06/3492/OPHWC, dated 12.05.2010 passed by the opposite party No.2-Chairman-*cum*-Managing Director of Odisha State Police Housing and Welfare Corporation Ltd., by virtue of which Office Order Nos.5451/OPHWC, dated 19.06.2009 and 5449/OPHWC, dated 19.06.2009, 5460/OPHWC, dated 19.06.2009 and 5464/OPHWC, dated 19.06.2009 whereby posts of watchman and peon

against which the petitioners have been working were regularised, were withdrawn, this writ petition has been filed before this Court to invoke the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

"It is, therefore, most humbly prayed that this Hon'ble Court may be graciously pleased to issue a Writ or Writs in the nature of a Writ of Mandamus, thereby directing the Opposite Parties not to revoke petitioners regularization orders dated 19.06.2009 under Annexure-4 series;

And may graciously be pleased to quash the Office Orders dated 12.05.2010 & 19.06.2009 as at Annexure-5 Series;

And consequently declare that the Petitioners are Regular Employees pursuant to order dated 19.06.2009 as at Annexure-4 Series;

And for which act of kindness the petitioners shall, as in duty bound, ever pray."

Facts:

2. Facts, as adumbrated in the writ petition, reveal that the petitioners are the employees under the Odisha State Police Housing and Welfare Corporation Limited, Opposite Party No.2 (hereinafter referred to as the "Corporation"). The petitioners were initially engaged as daily wage earners since the year 1987/1989/1994/ 1996 as per exigency and as required by the Corporation by filing applications and appearing in interview.

Subsequently, they were appointed on *ad hoc* basis since 1990/1994/1996.

2.1. The petitioners have been discharging their duties quite honestly, sincerely and to the best satisfaction of all concerned since the date of their engagements and also they have got rewards from the authorities for their good performance. However, the petitioner No.7, discharging his duty as watchman in the Corporation, got retired from service on 30.11.2019.

2.2. A chart indicating the Date of Birth / Educational Qualifications / Date of Initial Engagement / Date of *Ad hoc* Appointment and Date of Regularization of the present petitioners is stated herein below:

Name	*Date of Birth*	*Qualifi-cation*	*Date of initial Engage-ment*	*Date of Ad hoc Appoin-tment*	*Date of Regular-ization*	*Period of service on the date of passing order of regular-isation (19.06. 2009)*	*Period of Service as on date*
Rabin-dra Nath Barik (OBC)	10.8.66	7th	19.8.87	1.9.94	19.6.09	22 years	35 years
Trilo-chan Madhual (UR)	20.5.64	8th	9.9.88	29.8.90	Do	21 years	34 years

Pramod Kumar Jena (UR)	22.6.66	7th	5.12.88	4.10.90	Do	21 years	34 years
Prasant Kumar Behera (OBC)	2.6.72	9th	13.7.92	1.7.96	Do	17 years	30 years
Kartik Ch. Swain (UR)	10.6.70	9th	1.7.96	29.6.96	Do	13 years	26 years
Maheswar Behera (OBC)	3.5.68	8th	26.9.88	1.9.94	Do	21 years	34 years
Bhim Bahadur Ale	26.11.59	7th	1.6.89	21.3.90	Do	20 years	33 years

2.3. The petitioner No.2 got the reward from his authorities *vide* Orders dated 26.08.1994, 27.09.1996, 05.04.2000, 12.05.2000 and 01.02.2003 for sincere performance and devotion in discharging his duties. The petitioner No.4 was rewarded *vide* Order dated 23.02.2007 for sincerity and hard work. The petitioner No.6 was also rewarded *vide* Orders dated 19.03.1990, 21.05.2004 and 03.05.2005 for his sincerity in duty and hard work.

2.4. A Selection Committee was formed to consider suitability of *ad hoc* Watchman and *ad hoc* Peons/Orderly Peons for their coming over to the regular establishment. By proceeding dated 11.06.2009 of the said Selection Committee, the names of the petitioners had been approved for regularization. The Selection Committee had, accordingly, prepared a Gradation List as per the

length of service rendered by the petitioners, keeping in view the availability of vacant sanctioned posts.

2.5. While dealing with it, the Selection Committee had observed that against 17 sanctioned posts, 8 posts of peon had already been regularized in between 1990 to 1994 and 8 peons had already rendered their services for a quite long period on *ad hoc* basis. In case of present petitioner No.7, the Selection Committee considered him suitable to hold the post of Watchman on regular basis. The proceedings of the Meeting of the Selection Committee held on 11.06.2009 read as thus:

"*As per orders of the CMD in File No.E-38/06 & File No.E-31/06 the Selection Committee was formed with the Chief Engineer (Civil) as Chairman and the C.S. & Jt. General Manager (F) & the Dy. General Manager (Admn.) as Members to consider suitably of ad hoc Watchmen and ad hoc Peons/ Orderly Peons for their coming over to the regular establishment.*

The Selection Committee Meeting met on 11.06.2009 in the Office Chamber of the Chief Engineer, Civil and called for relevant files / records and their observation is made hereunder:

Watchman:

There is only one sanctioned post of Watchman which has been created on 12.01.1981 for the Corporate Office. *But there are 17 Watchmen working under the Corporation on adhoc basis since 1990/96/99. Prior to it, they were engaged as Daily Wage Earners*

since 1994. The CMD is competent to create and make appointment to the post carrying Rs.5500/- (pre-revised) per month. The adhoc Watchmen are at present getting only Rs.2550/- in the scale of Pay Rs.2550-3200 with DA, HRA etc. without increment on 44 days basis. Since there is only one sanctioned post, the rule of reservation will not apply to this case. From the gradation list, it is found that Sri Bhim Bahadur Ale is the senior most among all adhoc Watchmen and there is no adverse remark in performance of his duties. ***Therefore, the Committee considered Sri Bhim Bahadur Ale suitable to hold the post of Watchman on regular basis.*** *The financial implication on this score will be very nominal.*

Peons/Orderly Peons:

There are 17 sanctioned posts of Peons against which 8 (eight) Peons have been regularly appointed. As against remaining 9 (nine) posts, 8 (eight) Peons have been working on ad hoc basis since 1990/1994/1996. One post is kept in abeyance in view of WPC No.8595/05 files by Smt. Annapurna Swain, Peon (ad hoc). ***It is found from the gradation list of peons that the 8 (eight) Peons from Sl.No.9 to 16 were earlier engaged as Daily Wage Earners since 1987/1988/1994/1996. Subsequently they have been appointed on ad hoc basis since 1990/1994/1996. The CMD is competent to create and make appointment to the posts carrying Rs.5500/- per month.***

The rule of reservation is applicable to this case. According to 80-point Model Roster, 11-UR, 3-ST and 3-SC Peons are required against 17 sanctioned posts. But within the gradation list 14-UR, 1-ST and 1-SC Peons (both regular & adhoc) are available leaving one post vacant. Out of which 6-UR, 1-ST and 1-SC Peons have

been earlier regularly appointed and 8-UR Peons are now working on ad hoc basis.

Since there is no adverse remark against any of the adhoc Peons, the Committee now considered all the 8 Peons suitable for regularization of their ad hoc service subject to condition that the 4(four) reserved posts (2-ST, 2-SC) can be accommodated against the vacancy that will occur in future by way of retirement/resignation/creation or otherwise. ***The financial implication on this score will be very nominal.****"*

2.6. On recommendation of the Selection Committee and considering the long period of service rendered by the petitioners, the concerned authority, *i.e.*, opposite party No.2 regularized the services of the petitioner Nos.1 to 6 in the posts of Peon / Orderly Peon with the scale of pay of Rs.2550-55-2660-60-3200/- with D.A. and other allowances and present petitioner No.7 in the post of Watchman with scale of pay of Rs.2550-55-2660-60-3200/- with D.A. and other allowances with effect from 19.06.2009 *vide* Office Order(s) dated 19.06.2009.

2.7. The authorities referred the names for regularisation in service as per seniority in the gradation list against eight vacant sanctioned posts of Peons and one vacant sanctioned post of Watchman to the Board of Directors and Government for approval.

2.8. It is at this stage pointed out that since the roster procedure by according reservation was not followed,

clarification was sought for. The Selection Committee considered the case of the petitioners and observed that 8 peons including the present petitioners are working in the Corporation on *ad hoc* basis for quite a long time; amongst them two belong to OBC category. It is also reflected that the petitioners have long standing experience and outstanding service records. Thus, they have been considered for regularization. The Selection Committee also found that the Scheduled Caste and Scheduled Tribe candidates can be accommodated against the vacancies which would occur in future by way of retirement/resignations/creation of posts or otherwise. No experienced *ad hoc* Scheduled Caste and Scheduled Tribe candidate is available.

2.9. The petitioners had approached this Court in W.P.(C) No.7983 of 2010 and this Court *vide* Order dated 14.05.2010 while issuing notice in the said writ petition had been pleased to grant interim protection to the petitioner with the following effect:

> "*** *If the petitioners are continuing in the regular post they shall continue in the same post until further order."*

2.10. By the date of interim protection, the petitioners had already completed substantial length of service. Nonetheless, the opposite party No.2 *vide* Office Order No.3489/OPHWC, dated 12.05.2010 and Office Order No.3492/OPHWC, dated 12.05.2010 have withdrawn the

orders of regularization of the services of the petitioners which were granted *vide* Office Order No.5451 dated 19.06.2009, Office Order No.5449 dated 19.06.2009, Office Order No.5460/OPHWC, dated 19.06.2009 and Office Order No.5464/OPHWC, dated 19.06.2009.

2.11. The said Office Orders dated 12.05.2010 have been passed behind the back of the petitioners without any notice to them. Though no orders were communicated to the petitioners, they could come to know of such fact from the counter affidavit filed by the opposite party Nos.1 and 2 in W.P.(C) No.7983 of 2010. The Corporation in its counter affidavit had relied upon Office Order No.5464 dated 19.06.2009, wherein earlier Order No.5449 of even date was made subject to approval of the Board of Directors in its meeting. The Corporation in its counter affidavit filed in W.P.(C) No.7983 of 2010 had admitted that the regularization of the services of the petitioners as per orders dated 19.06.2009 was done by a Selection Committee which recommended regularization against existing sanctioned vacant post. Contrary to such recommendation, the Corporation also contended that the said orders dated 19.06.2009 were made subject to the approval of the Board of Director in the next meeting. The Corporation also relied upon orders dated 12.05.2010, by which

regularization of the services of the petitioners were revoked/withdrawn.

2.12. The petitioners had also filed a composite rejoinder affidavit in the said writ petition, *inter alia*, asserting that orders dated 12.05.2010 causing revocation/ withdrawal of the regularisation of their services and, the Letter dated 19.06.2009 by which their regularization was made subject to approval of the Board of Director was never served upon them and such orders could come to their knowledge only after the counter affidavit was filed. The petitioners also filed a petition seeking amendment of the writ petition to incorporate specific challenge to such orders. This Court *vide* Order dated 19.01.2023 while disposing of W.P.(C) No.7983 of 2010, passed the following order:

"1. Heard Mr. Palit, learned Senior Advocate for the Petitioners and Mr. Mishra, learned Senior Advocate for the Opposite Party No.2.

2. The Petitioner Nos.1 to 6, who are working as Peons and Petitioner No.7, who is working as Watchman under Opposite Party No.2-Corporation, approached this Court seeking a direction not to revoke their regularization order at Annexure-4 series.

3. The said orders are quoted hereunder for convenience of ready reference.

"The Orissa State Police Housing & Welfare Corporation Ltd., Janapath, Bhoinagar, Bhubaneswar-22

Office Order No.5449/OPHWC Date: 19.06.2009

The ad hoc services of the following Peons/Orderly Peons are regularized against the available sanctioned posts in orders of their seniority in the gradation list in the scale of pay Rs.2550-55-2660-60-3200 with D.A. and other allowances as admissible from time to time w.e.f. the date of issue of this order. *They will be on probation for one year from the date of their regularization:*

1.	Sri Trilochan Madhual	Orderly Peon
2.	Sri Pramod Kumar Jena	-do-
3.	Sri Rabindra Nath Barik	-do-
4.	Sri Mahabir Das	-do-
5.	Sri Krupasindhu Pihan	-do-
6.	Sri Maheswar Behera	-do-
7.	Sri Kartika Ch. Swain	-do-
8.	Sri Prasanta Kumar Behera	-do-

Sd/-
Chairman-cum-Managing Director
****"*

"The Orissa State Police Housing & Welfare Corporation Ltd., Janapath, Bhoinagar, Bhubaneswar-22

Office Order
No.E-38/06/5451/OPHWC, Bhubaneswar
Date: 19.06.2009

The ad hoc services of Sri Bhim Bahadur Ale watchman is regularized against one sanctioned post of Watchman in

the scale of pay Rs.2550-55-2660-60-3200 with D.A and other allowances as admissible from to time with effect from the date of issue of this order.

Sd/-
Chairman-cum-Managing Director
****"*

4. *In consideration thereof by order dated 14.05.2010 while issuing notice, this Court directed as under:*

   "If the Petitioners are continuing in the regular post, they shall continue in the same post until further order."

5. *It is stated at the Bar that the Petitioners are continuing in terms of the order passed by this Court, save and except Petitioner No.7 who has retired on 30.11.2019.*

6. *A counter affidavit has been filed by the Corporation controverting the allegations and a rejoinder in reply is on record.*

7. *By way of amendment, the Petitioners seek to assail the order dated 12.05.2010 though the same is annexed to the counter affidavit as Annexure-C/2 and the said counter affidavit is filed in Court on 15.05.2017.*

8. *An objection has been filed to the said interlocutory application for amendment, inter alia, on the ground that the same will change the nature and character of the lis. Hence, the same is liable to be rejected.*

9. *This Court is of the prima facie view that, in view of the averments in the interlocutory application and keeping in view that the Petitioners are litigating*

since 2010 and on a conspectus of materials on record leave should be granted, as prayed for, to file a fresh writ petition and accordingly it is so granted. It shall be open to the Petitioners to file such writ petition within a period of six weeks.

10. For a period of eight weeks from today, no coercive action shall be taken against the Petitioners keeping in view that this Court by order dated 14.05.2010 had passed an interim order, which is still in vogue.

11. It is made clear that this Court has not expressed any opinion regarding the merit of the matter.

12. It is brought to the notice of this Court that during pendency of the writ petition, Petitioner No.7 has retired on 30.11.2019. It shall be open to the said Petitioner to pursue his remedy in the proposed fresh writ petition, which shall be considered on its own merit.

13. The writ petition is accordingly disposed of.

14. Urgent certified copy of this order be issued as per rules."

2.13. Hence, the present writ petition.

Hearing:

3. On being noticed, the opposite parties have filed counter affidavit. Pleadings, being completed and exchanged amongst the counsel for respective parties, on consent of counsel for the parties, this matter is taken up for final hearing.

3.1. Accordingly, heard Sri Subir Palit, learned senior counsel along with Ms. Ananya Pradhan, learned counsel appearing for the petitioners and Ms. Saswata Pattnaik, learned Additional Government Advocate appearing for the State and Sri Girija Prasanna Dutta, learned Advocate along with Sri Kaibalya Manichandan Bhuyan, learned counsel appearing for opposite party No.2 and the matter stood reserved for preparation and pronouncement of Judgment.

Rival contentions and submissions:

4. Sri Subir Palit, learned senior counsel appearing for the petitioners submitted that the objection raised at a belated stage by the opposite parties that the provisions of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 (for short, "ORV Act"), being not followed at the time of engagement of the petitioners as *ad hoc* employees, Office Orders according their regularisation in service were liable to be withdrawn has no foundation to be sustained.

4.1. A conjoint reading of Sections 3, 5, 9 and 10 of the ORV Act, 1975 would lead to irresistible construction that the applicability of said Act shall normally be initiated from the very initial stage of recruitment. For the defect in following procedure by the authorities the employees

who have served the Corporation for a considerable period of their lives should not be subjected to civil and evil consequences.

4.2. In the case at hand, the petitioners being *ad hoc* appointees, their appointments have matured into regular appointment in due course of time and long continuation in service by virtue of principles of equity, justice and good conscience. The initial *ad hoc* appointment of the petitioners was not subjected to the provisions of ORV Act, 1975 notwithstanding the fact of applicability or non-applicability of provisions of said statute was within the knowledge of the appointing authority. As a consequence, such a plea of non-application of ORV Act, 1975 at the time of consideration of the prayer for regularization is not at all justiciable in law since the petitioners cannot suffer for the lapses, if any, of the authorities.

4.3. It is urged that the State-Authority/Corporation, being model employer, cannot be allowed to shun its responsibilities towards the petitioners, who have been exploited for a considerable length of time by extracting their services and the service records of the petitioners have been adjudged unblemished by the Selection Committee. Having rendered services for over two decades at the time of consideration for regularization in service and three decades as of date, on specious plea

that the provisions of the ORV Act, 1975, was not followed by the authorities concerned, the petitioners' orders of regularization could not have been withdrawn.

4.4. Sri Subir Palit, learned Senior Advocate assisted by Ms. Ananya Pradhan, learned Advocate vehemently contended that in view of provisions contained in Section 3 of the ORV Act, 1975, the case of the petitioners fall within the ken of exclusion clause thereunder.

4.5. It is submitted that concept of regularization derives its roots from the principles of equity, justice and fairness. The essence of employment and the rights conferred thereof on the petitioners cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over a period of time. Hence, rendering service continuously for considerable period (approximately three decades by now) has transcended the *ad hoc* employment for consideration to be brought over to regular establishment. Continuous service of the petitioners against vacant sanctioned posts as *ad hoc* appointees and their selection through a process of selection constitute a substantive departure from the temporary and *ad hoc* nature of their initial appointment. Hence, their service conditions warrant reclassification from temporary *ad hoc* to regular.

4.6. Sri Subir Palit, learned Senior Advocate has made suave submission that since similarly circumstanced employees had already been considered and regularized in the service, the petitioners should not have been treated differently. The act of regularizing the services of some employees and not regularizing the services of some others is indisputably discriminatory and falls foul of Article 14 of the Constitution. Such an act of discrimination lacks a justifiable nexus with the object sought to be achieved by the scheme of regularization. Therefore, the action of the opposite parties is tainted with not only arbitrariness but also the same is unconstitutional.

4.7. Cogent reason being not assigned, as is contended by Sri Subir Palit, learned Senior Advocate, the impugned Orders withdrawing the regularization of petitioners is arbitrary exercise of power. Such an action behind the back of the petitioners without even serving the office order thereon is liable to be deprecated. It came to the knowledge of the petitioners through the counter affidavit filed by the opposite party-Corporation in W.P.(C) No.7983 of 2010.

4.8. In this context, it is submitted that an order passed by an authority without stating the reason for its action is direct violation of the principles of natural justice. Any subsequent explanation cannot sanctify the order. An

order bereft of reasons fails to meet the basic ingredients of principles of natural justice and is, therefore, inherently flawed, rendering it indefensible.

4.9. In support of the above submission, Mr. Subir Palit, learned senior counsel appearing for the petitioners has relied on the following decisions:

(i) *Vinod Kumar and others Vrs. Union of India and others, reported in (2024) 1 S.C.R. 1230=(2024) 9 SCC 327.*

(ii) *Ravi Verma and others Vrs. Union of India and others, reported in 2018 SCC OnLine SC 3860.*

(iii) *Raman Kumar and others Vrs. Union of India and others, reported in 2023 SCC OnLine SC 1018.*

(iv) *Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi, reported in AIR 1978 SC 851= (1978) 1 SCC 405.*

(v) *Harbanslal Sahnia Vrs. Indian Oil Corporation Ltd., reported in (2003) 2 SCC 107.*

4.10. Sri Subir Palit has referred to paragraphs 5, 6, 7 and 8 of *Vinod Kumar and others Vrs. Union of India and others (supra),* wherein the Hon'ble Supreme Court has been pleased to observe as follows:

"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 State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1 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 State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1.*

7. *The judgment in State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1 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 State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1 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 Vrs. S.V. Narayanappa, 1966 SCC OnLine SC 23, R.N. Nanjundappa Vrs. T. Thimmiah, (1972) 1 SCC 409 and B.N. Nagarajan Vrs. State of Karnataka, (1979) 4 SCC 507 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.'

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."

4.11. To countenance his submission on discriminatory treatment in regularisation of service, he referred to paragraphs 4, 8, 9, 12 and 13 of *Ravi Verma and others Vrs. Union of India and others (supra)*, wherein the observations of Hon'ble Supreme Court runs as follows:

"4. The appellants were appointed as casual employees in the Income Tax Department in the year 1993-1994 since then they were working continuously. On 30th January 2004 with respect to other similarly

situated employees, temporary status was granted. The respondent No. 4 on 30th December 2004 recommended the case of the appellants for temporary status/regularization. Again it was recommended for regularization on 14.06.2005. In the meantime, the decision in the State of Karnataka Vrs. Uma Devi, (2006) 4 SCC 1 was pronounced by this Court, the same provided that the employees who had rendered services continuously for ten years without the cover of the court's order be regularized as the one-time measure.

8. *Again on 07.11.2007/19.11.2007 information was forwarded along with a recommendation for the regularization of services of the appellant and again on 01.01.2008 and 31.01.2008 also, recommendations were made. However services were not regularized, through Chief Commissioner, Income Tax, U.P. West, Ghaziabad regularized similarly placed 88 casual employees on 30.01.2009. The Chief Commissioner, Income Tax Orissa, Bhubneshwar also regularized similarly situated eight employees on 12.03.2009; orders of regularization have been placed on record respectively as Annexures P1 and P2. However, similar treatment was not accorded to the appellants.*

9. *On 01.06.2009 appellants 1, 2 and 3 were sanctioned minimum of regular pay scale of Group D employees with Dearness Allowance in accordance with DoPT Circular dated 31.05.2004 and in terms of the orders of CCIT dated 07.11.2007 and 06.12.2007 on conferral temporary of status on the employees. On 22.09.2009, Chief Commissioner,*

Income Tax, Kolkata also regularized 111 similarly situated casual employees and 17 employees on 15.10.1990 and Chief Commissioner, Income Tax, Lucknow regularized 59 similarly situated casual employees on 22.01.2010. There was further regularization of 35 employees of the office of Chief Commissioner, Income Tax, Patna on 20.08.2010. However, the claim of the appellants was rejected by respondent no. 3 though they had served continuously for more than ten years and fulfill the requisite criteria for the purpose of regularization in terms of the circulars of DoPT and the decision rendered by this Court in Uma Devi (supra). The appellants have also given the vacancy position.

12. *Having heard learned counsel for the parties at length, we are of the considered opinion that appointments were only irregular one, this Court observed in para 53 Uma Devi (supra) thus:*

> *'53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 above referred 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 regularize 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 regularization, 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 regularizing or making permanent, those not duly appointed as per the constitutional scheme.'

13. *In view of the aforesaid decision, the circulars and regularization of the similarly situated employees at other places and various recommendation that were made the services of the appellants ought to have been regularized in the year 2006; discriminatory treatment has been meted out to them. As per the decision of Uma Devi (supra), they were entitled to regularization of services; they did not serve under the cover of court's order. Illegality has been committed by not directing regularization of services."*

4.12. Reference has also been made to paragraphs 4 and 8 of *Raman Kumar and others Vrs. Union of India and others (supra)*, wherein the following are the observations:

> *"4. The matter arises out of regularization of the employees. The Chief Commissioner of Income Tax in his report dated 14.02.2013 found that, in the exercise conducted in pursuance of the judgment of this Court in the case of Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1, though 65 employees were found to be entitled for regularization, only 35 employees were regularized. This was done since only 35 vacancies were available.*
>
> *8. Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of Ravi Verma Vrs. Union of India (Civil Appeal No(s).2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India."*

4.13. Relying on *Mohinder Singh Gill and another Vrs. The Chief Election Commissioner (supra)*, it was contended that no reason can be taken into consideration which is sought to be supplemented in the counter affidavit to justified orders of withdrawal of regularisation in service. the Hon'ble Supreme Court in paragraph 8 of said decision observed as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commr. of Police, Bombay Vrs. Gordhandas Bhanji, 1951 SCC 1088 = AIR 1952 SC 16:

*'Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.' ***"*

4.14. In the case of *Harbanslal Sahnia Vrs. Indian Oil Corporation Ltd. (supra),* the Hon'ble Supreme Court observed as follows:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not

one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is failure of principles of natural justice; or

(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. Vrs. Registrar of Trade Marks, (1998) 8 SCC 1). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

5. *Per contra,* Sri Girija Prasanna Dutta, learned counsel appearing for opposite party No.2 in continuation of arguments advanced by him on earlier occasions, furnished written note of submission dated 05.10.2024 which reflected as follows:

"3. That it is submitted ***by this opposite party petitioners were engaged as Peon/Watchman under this opposite party and subsequently they were appointed on ad hoc basis and***

thereafter they raised grievance to regularize them. Accordingly considering their long association with the Corporation and the requirement of their services, the present opposite party being a model employer decided to examine their case for absorption against existing vacancies as per law.

4. ***That for the purpose of examining the cases of the petitioners, a Selection Committee was formed and the said Committee having found all the petitioners are suitable, recommended for their regularization subject to adjustment of four reserved posts against future vacancies.***

5. *That keeping in view the recommendation of the Selection Committee, this opposite party regularized the services of the petitioners on 19.06.2009 but the same was made subject to approval of Board of Directors in their next meeting which was communicated to all the petitioners.*

6. *That while regularizing the services of the petitioners, the then CMD ordered that post facto approval of the Corporation Board be taken. On 08.09.2009 the matter was placed before the Board. The Board wanted further information on the following:*

   a. *Whether Govt. approval has been taken in view of ban on recruitment to Base Level Posts?*

   b. *Whether provisions of Odisha Reservation of Vacancy Act, 1975 has been followed. In this regard, Govt. of Odisha Home Department has also asked for a report vide letter No.41259/M&D dated 09.09.2009*

7. *That therefore the Board of Director in its meeting dated 18.02.2010 decided as follows:*

While regularizing the services of CMD ordered that post facto approval of the Corporation Board be taken. On 08.09.2009 the matter was placed before the Board. The Board wanted further information on the following:

8. *Whether Govt. approval has been taken in view of ban on recruitment to Base Level Posts?*

9. *Whether provisions of Odisha Reservation of Vacancy Act, 1975 has been followed. In this regard, Govt. of Odisha Home Department has also asked for a report vide letter No.41259/M&D dated 09.09.2009.*

10. *That as per the provision of the ORV Act, the eight posts should come under the following categories:*

	Men	*Women*
General	*2*	*1*
SC	*1*	*1*
ST	*1*	—
SEBC	*1*	*1*

8. *That the Board of Directors therefore did not accord approval in absence of prior approval from Govt. of Odisha and therefore the matter was referred to O.P. No.1/State Govt. for due examination and imparting necessary instructions but the O.P. No.1/Govt. of Odisha instructed the Corporation to withdraw of orders of regularization in respect of the petitioners and accordingly as per the instruction of the opposite*

party No.1 this opposite party withdrawn the regularization orders on 12.05.2010.

9. *That it is also submitted by this O.P that out of 12 numbers of Peons as per the restructuring which was made in the year 2016, there already exits 05 numbers of regular Peons who were appointed way back in the year 1990 and one watchman has been regularized in 151 Board Meeting held on 15.05.2023.*

Thus, at present there are 07 numbers of posts of Sanctioned Peon posts and the remaining 06 numbers of posts of Watchman are available but as the present petitioners who are ad-hoc peons are continuing in the post of Peons by virtue of the direction of this Hon'ble Court, so there is no sanctioned vacancy for peon posts.

Similarly, as regards to the post of watchman, though there are 06 nos. of sanctioned vacant post out of which there was one regular watchman but as in the meantime the regular watchman was superannuated, so the corporation in its 151st Meeting held on 15.05.2023 after applying ORV Act has already regularize the services of the peons.

10. *That it is submitted this deponent that since at present there are 07 nos. of posts of Sanctioned Peon posts are available (by virtue of the direction of this Hon'ble Court the petitioner No.1 to 6 are continuing in the said post). So after application of ORV Act, the following posts are available for regularization:*

Total Vacant Post (as per the direction of this Hon'ble Court the present petitioner No.1 to 6 are continuing

and 05 numbers of regular peons are already existing) so there are altogether 12 posts.

As per ORV Act the following numbers of post are reserved.

S.T. = 12 x 22.5% = 2.7 ≈ 3 posts
S.C = 12x16.25% = 1.95 ≈ 2 post
SEBC = 12x11.25% 1.35 ≈ 1 post

Since 05 nos. of peons are already working under regular basis under 04 unreserved categories and one SC category, so there was 02 nos. of posts of peon are available under General category and one post of Peon under S.C. category are available.

Since, the present petitioners No.1 to 6 are functioning as Peons under the un-reserved category as per the direction of this Hon'ble Court, so, there is no vacancy available with the Corporation for regularisation."

5.1. Sri Girija Prasanna Dutta, learned advocate for the opposite party No.3 sought to justify the orders of withdrawal of office orders regularising the services of the petitioners.

Legal position:

6. Before proceeding with the matter, it is felt apposite to discuss the legal position with respect to regularisation of service of employees as set out by different Courts.

6.1. To begin with it is apt to refer to the anxious consideration shown by the Madras High Court in *N.*

Karunanidhi Vrs. Union of India, W.P. No. 12887 of 2016, vide Judgment dated 22.04.2022 made with respect to exploitation of service. The following benevolent observation has been made by said Court in favour of employees, whose services have been utilized by the Government for a long time:

> *"18. If the Courts cannot give direction for their regularisation of service, in the constrained legal scenario what other remedies that are available to these unfortunate employees, who have been engaged in service for public purpose, without having any definite future to hold on?* ***These petitioners cannot be kept on the tenterhooks of their employment for years together, by brushing aside and discarding their concerned yearning for a definite future, with unresponsive indifference****.*
>
> *19.* ***A welfare State grounded on constitutional values, cannot come up with apathetic and callous stand that despite continued employment of these petitioners for years together, no semblance of right is available to them.*** *Such stand by the State is opposed to constitutional values as enshrined in Article 21 of the Constitution of India. The Courts of course have held that equal opportunity must be provided in public employment and entry through back door should be discountenanced. When Article 21, being violated by the State, action towards its servants, the consideration of the Government must primarily be focussed on alleviating legitimate grievances of its employees. Even assuming that the recruitment of*

these writ petitioners had not been fully in consonance with the procedure for appointment in Government services, the fact remained that these persons have been consciously appointed by the Government for implementing public projects and the work has been extracted from them continuously for several years. It is therefore, not open to the Government after a period of time to turn around and contend that these writ petitioners have no right at all to seek any kind of guarantee for their future.

20. ***In the opinion of this Court, continued employment for several years, even on a projects meant to serve the State as a whole, certain rights would definitely accrue to them, atleast to the extent of making a claim for formulation of a scheme/towards their absorption.*** *This Court is quite conscious of the fact that the Government has been benevolent and had come up with several schemes in the past and directed regularisation of services of thousands of employees over a period of time. Such benevolence ought to permeate to the lowest levels to take within its sweep the desperate cry of the petitioners as well. As in the sublime words of the father of nation, Mahatma Gandhi, 'A nation's greatness is measured by how it treats its weakest members'. Merely because these writ petitioners have been employed in the projects, the policy makers may not shut their mind and close their eyes to their precarious plight having to serve public purpose but left in the lurch and unprotected, at the end of the day."*

6.2. Learned Single Judge of this Court in *Dr. Prasana Kumar Mishra Vrs. State of Odisha, W.P.(C) No.11148 of 2005*

[reported at 2016 (I) ILR-CUT 373], made the following observation:

> "7. *In Binan Kumar Mohanty Vrs. Water and Land Management Institute (WALMI), 2015 (I) OLR 347 referring to Kapila Hingorani Vrs. State of Bihar, (2003) 6 SCC 1 the apex Court held that the Government companies/public sector undertakings being 'States' would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. Therefore, if the petitioner has rendered service for around 20 years, keeping in view the ratio decided in Kopila Hingorani (supra), this Court issues direction to the opposite parties to mitigate the hardship of the employees. Financial stringency is no ground for not issuing requisite directions when there is violation of fundamental rights of the petitioner. Allowing a person to continue for a quite long period of 20 years of service and exploiting him on the pretext of financial crunch in violation of Article 21 of the Constitution of India is sheer arbitrariness of the authority which is highly condemnable.*
>
> 8. *In Narendra Kumar Ratha and Others Vrs. State of Odisha and Others, 2015 (I) OLR 197, this Court has taken into consideration the object of Article 16 of the Constitution of India to create a constitutional right to equality of opportunity and employment in public offices. The word 'employment or appointment' cover not merely the initial appointment, but also other attributes like salary, increments, revision of pay, promotion, gratuity, leave pension and age of superannuation etc. Appointment to any post under the State can only be*

made in accordance with the provisions and procedure envisaged under the law and guidelines governing the field.

9. *In Prabodh Verma and Others Vrs. State of U.P. and Others, (1984) 4 SCC 251, the apex Court held that Article 16 is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government.*

10. *Similar view has also been taken by the apex Court in Km. Neelima Mishra Vrs. Harinder Kaur Paintal and Others, (1990) 2 SCC 746 = AIR 1990 SC 1402 and E.P. Royappa Vrs. State of Tamil Nadu and Another, (1974) 4 SCC 3. Clause (1) of Article 16 guarantees equality of opportunity for all citizens in the matters of employment or appointment to any office under the State. The very concept of equality implies recourse to valid classification for preference in favour of the disadvantaged classes of citizens to improve their conditions so as to enable them to raise themselves to positions of equality with the more fortunate classes of citizens. This view has also been taken note of by the apex Court in the case of Indra Sawhney Vrs. Union of India, 1992 Supp. (3) SCC 217 = AIR 1993 SC 477."*

6.3. The case of *Prasana Kumar Mishra (supra)* was carried in appeal before the Division Bench, giving arise to *W.A. No.4 of 2016*, which was dismissed *vide Order dated 11.12.2019*. Said matter, being carried further to the Hon'ble Supreme Court of India, *vide* Order dated 07.08.2020, the S.L.P.(C) No.4945 of 2020, filed at the

behest of Biju Patnaik University of Technology, stood dismissed.

6.4. Showing anxiety so far as regularization of services, in a catena of decisions the Hon'ble Supreme Court of India has succinctly and illuminatingly dealing with the concept of regularization, in the case of *Narendra Kumar Tiwari Vrs. State of Jharkhand, (2018) 8 SCC 238*, has said as follows:

"The purpose and intent of the decision in Umadevi (3) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3), (2006) 4 SCC 1 is a clear indication that it believes that it was all right to continue with irregular appointments and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. ***This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head.*** *This is precisely what Umadevi and Kesari sought to avoid."*

6.5. In *Sunil Barik Vrs. State of Odisha, 2021 (II) OLR 469,* it has been discussed as follows:

"12. As it appears from the record itself, the case of the petitioner is squarely covered by the exception carved out in paragraph 53 of the judgment

rendered in Umadevi (3) mentioned supra. Meaning thereby, against an existing sanctioned vacancy in the post of Barber, the petitioner having been engaged by following due procedure of selection in the post of Home Guard and continued for a quite long period, which is not disputed by the opposite parties-State as per the pleadings available in the counter affidavit and, as such, the petitioner is still continuing, the same cannot be treated as an 'illegal engagement', rather it may be nomenclatured as an 'irregular engagement'.

13. *In State of Jammu and Kashmir Vrs. District Bar Association, Bandipora, MANU/SC/1566/2016 = (2017) 3 SCC 410, wherein a distinction has been made with regard to 'irregular' and 'illegal' engagement, referring to the exception carved out in Umadevi (3) mentioned supra, in paragraph 12 of the said judgment it has been stated as follows:*

> *'12. The third aspect of Umadevi (3) which bears notice is the distinction between an 'irregular' and 'illegal' appointment.* ***While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment.*** *There may be varied circumstances in which an ad hoc or temporary appointment may be made.* ***The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be***

__disputed.__ The exercise of power however stands vitiated if it is found that the exercise undertaken

(a) was not in exigencies of administration; or

(b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or

(c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides."

6.6. In *Suvendu Mohanty Vrs. State of Odisha, 2015 SCC OnLine Ori 267,* it has been observed as follows:

"9. With regard to the regularization of the services of the petitioners, a mention has been made in Annexure-4 that the petitioners being irregular recruits, their regularization is not permissible under the State Government Rules. But this condition made in the restructuring order in Annexure-4 so far as it relates to the petitioners cannot be applicable in view of the fact that the petitioners have been appointed against regular vacancies available in the regular scale of pay admissible to the post. But in view of their continued service for more than 10 years, their cases are covered by the ratio of the judgment of the apex Court in Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1 = AIR 2006 SC 1806, wherein the apex Court has held that the appointments made against temporary or ad-hoc basis are not to be regularized. __In paragraph 53 of the said judgment, it is provided that irregular appointment of duly qualified persons against__

sanctioned posts, who have worked for 10 years or more can be considered on merits and steps to be taken as one time measure to regularize them. *In Paragraph 53 of the said judgment, the apex Court has held as follows:*

'53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan 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 above referred 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 by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.'

10. *The object behind the exception carved out in this case was to permit regularization of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years. Similar question came up for consideration before the apex Court in Civil Appeal No. 2835 of 2015 (arising out of SLP (Civil) No. 20169 of 2013 disposed of on 13.3.2015 [Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265]. In paragraphs 12 and 13, the apex Court has held as follows:*

'12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka Vrs. M.L. Kesari, (2010) 9 SCC 247, this Court held as under:

'7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the

benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. ***But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.'***

13. *Applying the ratio of Umadevi's case, this Court in Nihal Singh Vrs. State of Punjab, (2013) 14 SCC 65 directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:*

'35. ***Therefore, it is clear that the existence of the need for creation of***

the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing

*benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is— the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.'***"*

6.7. Reference can also be had to *Amarendra Kumar Mohapatra Vrs. State of Odisha, (2014) 4 SCC 583 = AIR 2014 SC 1716; Subrata Narayan Das Vrs. State of Odisha, W.P.(C) No.18659 of 2016, vide Judgment dated 12.07.2022.*

6.8. In the case of *Union of India Vrs. Central Administrative Tribunal, (2019) 4 SCC 290* the following is the observation:

"25. The Court noted in the above judgment that if a strict and literal interpretation was given to the decision in Umadevi, no employee from the State of Jharkhand appointed on an irregular basis could ever be regularized as the State was formed on 15 November 2000 and the cut-off date had been fixed as 10 April 2006. The intent of the Court was to grant similarly-placed employees who had put the requisite years of service as mandated by Umadevi, the benefit of regularization. The Court thus held

that the Jharkhand Sarkar ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali, 2015 ('the Regularisation Rules') must be interpreted in a pragmatic manner and employees of the State who had completed 10 years of service on the date of promulgation of the rules, ought to be regularized. In doing so, the Court ensured that employees in the State of Jharkhand who had completed the same years of service as employees from other States, are granted parity in terms of regularization. The spirit of non-discrimination and equity runs through the decisions in Umadevi [(2006) 4 SCC 1], ML Kesari [(2010) 9 SCC 247] and Narendra Kumar Tiwari [(2018) 8 SCC 238].

26. In this background, the issue which now arises before this Court is in regard to the effective direction which would govern the present case. The High Court has directed the Union of India to absorb the casual workmen, if it is not possible at the Institute in question, then in any other establishment. The latter part of the direction, as we have already noted, cannot be sustained. Equally, in our opinion, the authorities cannot be heard to throw their hands in despair by submitting that there are no vacancies and that it had already regularized such of the persons in the seniority list, who reported for work. The Tribunal has entered a finding of fact that this defence is clearly not borne out of the record. Accordingly, we are of the view that having decided to implement the decision of the Tribunal, which was affirmed by the High Court, the Union of India must follow a rational principle and abide strictly by the seniority list in proceeding to regularize the workmen

concerned. Accordingly, we direct that the case for regularization shall be considered strictly in accordance with the seniority list in pursuance of the directions which were issued by the Tribunal and confirmed by the High Court and such of the persons, who are available for regularization on the basis of vacancies existing at present, shall be considered in accordance with law. The Tribunal has denied back-wages but has ordered a notional fixation of pay and allowances. While affirming that direction, we also direct that persons who have crossed the age of superannuation will be entitled to the computation and payment of their retiral dues on that basis. This exercise shall be carried out within a period of three months from the receipt of a copy of the judgment. If it becomes necessary to grant age relaxation to the concerned workmen, the Appellants shall do so."

6.9. In *Vibhuti Shankar Pandey Vrs. State of Madhya Pradesh, 2023 LiveLaw (SC) 91 = (2023) 3 SCC 639*, it has been stated as follows:

*"*** The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in Secretary, State of Karnataka and Others Vrs. Umadevi and Others, (2006) 4 SCC 1, as* ***initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working****. ***"*

6.10. It may be apt to refer to *Ranjeet Kumar Das Vrs. State of Odisha, 2018 (I) ILR-CUT 695*, wherein relevant portion of the Judgment runs as follows:

> *"7. Before delving into the niceties of the order passed by the tribunal, this Court deems it proper to examine the claims of the petitioner on the basis of the factual matrix available on record itself. On the basis of the pleadings available before this Court, no doubt the petitioner had approached the tribunal seeking regularization of his services.* ***Regularization in service law connotes official formalisation of an appointment, which was made on temporary or ad hoc or stop gap or casual basis or the like, in deviation from the normal rules of applicable norms of appointment. Such formalisation makes the appointment regular.*** *The ordinary meaning of regularisation is "to make regular" according to The Shorter Oxford English Dictionary, 3rd Edition, and according to Black's Law Dictionary, 6th Edition, the word "regular" means:*
>
> *'Conformable to law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation. Usual, customary, normal or general. Gerald Vrs. American Cas. Co of Reading, Pa., D.C.N.C., 249 F, Supp. 355, 357. Made according to rule, duly authorised, formed after uniform type; built or arranged according to established plan, law, or principle. Antonym of "casual" or "occasional," Palle Vrs. Industrial Commission, 79 Utah 47, 7 P. 2d. 248, 290.'*

8. *The above being the meaning of "regular", as per the common parlance given in dictionary, in B.N. Nagarajan, Vrs. State of Karnataka, AIR 1979 SC 1676 = (1979) 4 SCC 507, the apex Court held that the effect of such regularization would depend on the object or purpose for which the regularization is made or the stage at which it is made. Once regularized, the procedural infirmities which attended the appointment are cured. Regularization, however, does not necessarily connote permanence.*

9. ***The word 'regular' or 'regularisation' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.*** *Relying on the Judgments of the apex Court in B.N. Nagarajan Vrs. State of Karnataka, AIR 1979 SC 1676 = (1979) 4 SCC 507, the Constitution Bench of the apex Court in State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1 has also taken the same view, which has also been followed by the apex Court in Hindustan Petroleum Corpn. Ltd. Vrs. Ashok Ranghba Ambre, (2008) 2 SCC 717 and also in Hindustan Aeronautics Ltd. Vrs. Dan Bahadur Singh, (2007) 6 SCC 207.*

10. *Temporary or ad hoc or stop gap or casual basis or the like appointments are made for various reasons. An emergent situation might make it necessary to make such appointments. Since the adoption of the normal method of regular recruitment might involve considerable delay regulating in failure to tackle the*

emergency. ***Sometimes such appointments were to be made because although extra hands are required to meet the workload, there are no sanctioned posts against which any regular recruitment could be made. In fact in the case of ad hoc or casual appointees, the appointments, are in the majority of cases, not against sanctioned posts and the appointments are made because of the necessity of workload and the constraints of sanctioning such post (mainly on financial consideration) on permanent basis.*** *Needless to say that filling up vacancies against sanctioned posts by regularisation is against the constitutional provisions of equality of opportunity in the matter of public employment violating Articles 14 and 16 of the Constitution by not making the offer of employment to the world at large and allowing all eligible candidates equality of opportunity to be considered on merits. If that be so, considering the emergent necessity of filling up of vacancies and allowing the petitioner to continue for a quite long period, even if with one day break in service, cannot be stated to be a reasonable one, rather, this is an unfair and unreasonable action of the authority concerned.*

***

12. In view of above constitutional philosophy, whether Courts can remain as mute spectator, is a matter to be considered to achieve the constitutional goal in proper perspective. But all these questions had come up for consideration and decided by the Constitution Bench of the apex Court in Umadevi (3) mentioned supra. The factual matrix of the case in Umadevi (3)

arose for consideration from a judgment of Karnataka High Court. In some of the cases, the Karnataka High Court rejected the claims of persons, who had been temporarily engaged as daily wagers but were continued for more than 10 years in the Commercial Taxes Department of the State of Karnataka for regularization as permanent employees and their entitlement to all the benefits of regular employees. Another set of civil appeals arose from the order passed by the same High Court on a writ petition challenging the order of the government directing cancellation of appointments of all casual workers/daily rated workers and seeking a further direction for the regularization of all such daily wage earners engaged by the State or local bodies. These claims were rejected by the Division Bench of the Karnataka High Court on appeal from the judgment of the learned Single Judge. The reason for the mater being considered by the Constitution Bench arose because of two earlier orders of reference made by a Bench of two-Judge and subsequently by a Bench of three-Judge- Secretary, State of Karnataka Vrs. Umadevi (1) (2004) 7 SCC 132, and Secretary, State of Karnataka Vrs. Umadevi (2) (2006) 4 SCC 44, respectively, as they noticed the conflicting opinions expressed by the earlier 3 Bench judgments in relation to regularization."

6.11. In *Patitapaban Dutta Dash Vrs. State of Odisha, W.P.(C) No. 19951 of 2020, vide Judgment dated 09.09.2021*, a Single Bench of this Court has made the following observation:

"8. It is worthwhile to mention here that the Court comes into picture only to ensure observance of fundamental rights, and to ensure the rule of law and to see that the executive acts fairly and gives a fair ideal to its employees consistent with requirements of Articles 14 and 16 of the Constitution, and that the authority should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. For this very reason, it is held that a person should not be kept in contractual, temporary or ad hoc status for a long period. Where a contractual, temporary or ad hoc appointment is continued for long, the Court presumes that there is need of a regular post and accordingly directs for regularization. ***While issuing direction for regularization, the Court must first ascertain the relevant fact, and must be cognizant of the several situations and eventualities that may arise on account of such direction. If for any reason, a contractual, ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization, provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.*** *Even though a casual labourer is continued for a fairly long spell, say two or three years, a presumption may arise that there is regular need for his service. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the*

authorities ought to adopt a positive approach coupled with empathy for the person."

6.12. Aforesaid Judgment rendered by the Single Judge of this Court in *Patitapaban Dutta Dash (supra)* got the seal of approval of this Court being carried in appeal bearing W.A. No. 777 of 2021 before the Division Bench, which came to be disposed of *vide* Judgment dated 12.04.2023 [see, *(2023) (I) ILR-CUT 906*]. While directing the State of Odisha to implement the direction of the Single Judge "in letter and spirit", this Court in the ultimate held as follows:

> *"44. Going by the above legal position, in the present cases, at the highest, the respondents could be considered to be 'irregularly' appointed and therefore would, even on the touchstone of Umadevi (supra), be eligible for regularization. The law in M.L. Kesari (supra), has been reiterated in Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265, Sheo Narain Nagar Vrs. State of U.P., (2018) 13 SCC 432 = AIR 2018 SC 233 and Rajnish Kumar Mishra Vrs. State of U.P., (2019) 17 SCC 648."*

6.13. Noticing the Judgment of the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and Others Vrs. Umadevi (3), (2006) 4 SCC 1*, in *Niranjan Nayak Vrs. State of Odisha & Others, 2023 (I) OLR 407* the observation of this Court runs as follows:

> *"12. Similarly, in the case of Amarendra Kumar Mahapatra and Others Vrs. State of Odisha and*

Others, (2014) 4 SCC 583 = AIR 2014 SC 1716, the Supreme Court was of the opinion that ***the appellants were entitled to regularization in service having regard to the fact that they have rendered long years of service on ad hoc basis****.*

13. In the case at hand, it can be ascertained that the petitioner was appointed against a substantive vacant post and he had been discharging his duties in the said post since 1993. The appointment was made on an ad hoc basis and was extended from time to time. Since the petitioner was appointed against substantive vacancy and the post was sanctioned by higher authorities, the petitioner should have been extended the benefit of regulatisation like other similarly situated persons."

6.14. This Court wishes to take notice of recent view of Hon'ble Supreme Court of India expressed in the case of *Jaggo Vrs. Union of India, 2024 SCC OnLine SC 3826*, wherein it has been observed as follows:

"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 Vrs. Union of India, (2024) 1 SCR 1230, 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) also distinguished between "irregular" and

*"illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. ***"*

21. *The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments.* ***In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.***

22. ***The pervasive misuse of temporary employment contracts****, as exemplified in this case,* ***reflects a broader systemic issue that adversely affects workers' rights and job security.*** *In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to*

avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

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

24. *The landmark judgment of the United State in the case of Vizcaino Vrs. Microsoft Corporation, 97 F.3d 1187 (9th Cir. 1996) serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations*

have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. ***It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.***

25. *It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*

Misuse of "Temporary" Labels:
Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

Arbitrary Termination:
Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant

insecurity, regardless of the quality or duration of their service.

Lack of Career Progression:
Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

Using Outsourcing as a Shield:
Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

Denial of Basic Rights and Benefits:
Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. ***While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees.*** *This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held*

that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for Government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. ***By ensuring fair employment practices, Government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody.*** *This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby*

contributing to the overall betterment of labour practices in the country."

6.15. In the case of *Shripal Vrs. Nagar Nigam, 2025 SCC OnLine SC 221* referring to observations rendered in *Jaggo (supra),* the Hon'ble Supreme Court of India has clarified that:

"16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. ***Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status.*** *While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.*

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

cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.

18. *The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:*

    I. *The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.*

    II. *The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.*

    III. *Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid*

dues within three months from the date of their reinstatement.

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

Analysis and discussions:

7. From the rival contentions/submissions and scanning through the documents forming part of pleading it remains undisputed:

i. The petitioners have been engaged as Peon and Watchman under the Odisha State Police Housing and Welfare Corporation Ltd.

ii. They were initially engaged as Daily Wages Earners since 1987/1989/1994/1996 as per the exigency.

However, as required by the Corporation by filing applications and appearing in the interview, they were appointed on *ad hoc* basis since 1990/1994/ 1996.

iii. Their long association with the Corporation led the Corporation, a model employer, to take decision to examine their case for absorption against existing vacancies.

iv. By virtue of Office Order No.E-38/06—3489/OPHWC, dated 13.05.2010 of the Odisha State Police Housing and Welfare Corporation Ltd., the Office Order No.5451/OPHWC, dated 19.06.2009 and No.5460/OPHWC, dated 19.06.2009 in which the services of one Watchman was regularised has been withdrawn.

v. This Court while entertaining the present writ petition, *vide* Order dated 01.02.2023 has directed for keeping the said Office Order in abeyance 13.05.2010 and in pursuance thereof the petitioners have been continuing.

8. This Court is called upon to decide whether such a withdrawal of Office Orders regularising the services of the petitioners is just and proper?

9. What is perceived from the written note of submission filed by the opposite party No.2 and the arguments advanced by Sri Girija Prasanna Dutta, learned Advocate, it is manifest that on application of the Odisha Reservation of Vacancies in Posts and Services (For Scheduled Castes and Scheduled Tribes) Act, 1975, no vacancy is available to absorb the petitioners. Therefore, the emphasis by the opposite parties is on the application of the ORV Act to obviate the decision of the Selection Committee in its Meeting dated 11.06.2009 as reflected in Office Orders dated 19.06.2009 of the Corporation.

9.1. Such a stance of the Corporation appears to run counter to purport of exclusion clause envisaged under Section 3 of the ORV Act.

9.2. As is admitted, the petitioners were engaged as peons/watchman under the opposite party No.2-Odisha State Police Housing Welfare Corporation Ltd. on Daily Wage basis and subsequently were given *ad hoc* engagement. Thus, the decision of the opposite parties is flawed inasmuch as the same contradicts exclusion of application of ORV Act in terms of Section 3 *ibid.*

9.3. At the stage of consideration of regularisation/ absorption in service, the application of the ORV Act is not a *sine qua non* factor. Needless to repeat that at the

time of engagement the authorities ought to have kept in view such statutory requirement, if any. For the flaw in adhering to procedural infirmity could not adversely affect the petitioners' right to be considered for regularisation in services after having rendered unblemished service for long period.

9.4. In this connection the observation of a Division Bench of this Court in the case of *Director General of Training and Coordination Vrs. Biswamitra Parida, W.A. No.822 of 2020, vide Order dated 10.02.2021* may fruitfully be referred to:

> *"By way of this Writ Appeal the appellants-State functionaries have challenged the Order dated 03.09.2020 passed by the learned Single Judge in W.P(C) No.22112 of 2020.*
>
> *The brief fact of the case is that the respondents were engaged as Junior Data Entry Operators on contractual basis under the appellants-institution-Gopabandhu Academy of Administration in the year 2011. Since there was necessity of a regular Data Entry Operators in the Academy, the appellant No.1 was making correspondences frequently for sanction of the post of Data Entry Operators, but till date no action has been taken by the Administrative Department in the matter of sanction of post of Data Entry Operators. On the other hand, the respondents were engaged against the post of Data Entry Operators on contractual basis vide GAA office orders dated 29.01.2011 and 07.02.2011. The grievance of the respondents is that they have rendered more than 10 years of service till now under the appellant's*

institution for which they seek for regularization of their service on the basis of ratio of the judgment in Secretary State of Karnataka and others Vrs. Umadevi (3) and others (2006) 4 SCC 1 and in State of Karnataka & others Vrs. M. L. Kesari & others involving SLP(C) No.15774 of 2006 2 and also the resolution of the G.A Department dated 17.09.2013.

Hence, this Court observes that the Resolution dated 17.09.2013 of the General Administration Department was passed pursuant to the direction issued by the Hon'ble Apex Court for regularization of the DLR, daily wages employees who has completed six years service. Here, the respondents were engaged as Data Entry Operators in the year 2011 pursuant to a selection list after creation of posts. In view of the Resolution dated 17.09.2013, since the respondents have already completed the required years of continuous service/engagement and posts were created pursuant to the direction of the learned Court, the appellants-opposite parties should not have engaged the respondents on contractual basis. Therefore, the appellants opposite parties should regularize the service of the respondents in accordance with the Resolution dated 17.09.2013 of the General Administration Department.

***Considering the above facts, it is not disputed that similar questions on principles of ORV Act which were not followed earlier, series of writ petitions were disposed of which were confirmed by the Apex Court in SLP No.18642 of 2018 dated 06.08.2018 in the case of State of Odisha & Anr. Versus Jatin Kumar Das which arises out of Original Application No.2172(C) of 2015 and batch of cases.** In the said Original Application, the learned Tribunal has already*

dealt with the said issue having not followed the Rules of the ORV Act at paragraph-8 of the judgment dated 17.05.2017 and 75 Original Applications were disposed of by the Tribunal wherein the following specific finding was given:

'the ORV Posts and Services Act 1975 has no application to the posts to be filled up through contract in terms of Section 3(d) of the said Act. The respondents failed to produce any paper indicating the amendment of Section 3(d) of ORV Act, 1975 so also they could not able to produce the documents that there was any other statutory and mandatory provision overriding Section 3(d) referred to above for application of the reservation principle ***while issuing contractual engagement/appointment in favour of the applicants during the year 2005.****'*

However, pursuant to the direction of this Court to take instruction, learned Additional Government Advocate submitted that the Resolution dated 17.09.2013 passed by the General Administration Department for regularization of the DLR, daily wages employees shall be applicable in the case of present respondents.

In view of the above facts, all the writ petitions were disposed of confirming the order of Tribunal and the said orders of the writ petitions were confirmed by the apex Court in Special Leave Petition on the same issue. Rightly the learned Single Judge has directed the appellants-State authorities to regularize services of the Respondents petitioner in terms of the above facts and circumstances narrated in the above paragraphs. Therefore, we are not inclined to interfere with the impugned order dated 03.09.2020 passed by the learned Single Judge in W.P.(C) No.22112 of 2020. Accordingly, the Writ Appeal is dismissed.

However, the appellants are directed to consider the case of the respondents and to regularize their service and grant consequential service benefits as due and admissible to them within a period of two months from the date of communication of a copy of this order keeping in view the Resolution dated 17.09.2013 the Finance Department."

9.5. Said decision of this Court was carried to the Hon'ble Supreme Court of India in *Petition(s) for Special Leave to Appeal (C) No(s).6851 of 2021 (State of Odisha Vrs. Biswamitra Parida),* which came to be disposed of on 30.06.2021 with the following Order:

"1. We are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.

2. The Special Leave Petitions are accordingly dismissed.

3. Pending application, if any, stands disposed of."

9.6. The observation of the Hon'ble Supreme Court of India in the case of *State of Odisha Vrs. Laxman Kumar Prusty, Petition for Special Leave to Appeal (C) No. 95 of 2019 (Arising out of impugned final judgment and order dated 23.03.2018 in WP(C) No.22547 of 2017 passed by the High Court of Orissa at Cuttack)* is noteworthy:

"Having heard learned counsel appearing for the petitioner and in the peculiar facts and circumstances of the case and considering the fact that the respondents herein/original applicants were continued since 2008 against the regular posts and completed six years of

contractual service, they were entitled to the benefit of Resolution dated 17.09.2013. ***The submission made on behalf of the respondents that at the relevant time when they were appointed, the reservation was not followed and, therefore, they are not entitled to regularisation is concerned, the petitioner/State cannot be permitted to take such a stand after continuing them on contractual basis for approximately six years.*** *No interference of this Court is called for. The Special Leave Petition stands dismissed.*

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

9.7. In *Rajashree Rout Vrs. State of Odisha, 129 (2020) CLT 507*, it is the observation of this Court that,

"13. On critical analysis of the relevant provisions of the ORV Act, 1975 and the resolutions governing the field, it would be clearly evident that so far as engagement of ICDS supervisor under Keonjhar district is concerned, neither the ORV Act, 1975 nor any such reservation is applicable. But, in the proceedings of the selection committee meeting held on 26.11.2011 in Mini Conference Hall, Collectorate, Keonjhar for filling up the vacant post of lady supervisor on contractual basis under DSWO, Section, Collectorate, Keonjhar, under the heading of zone of consideration, a decision was taken that ORV Act, 1975 will be applicable to the contractual engagement. Such decision of the selection committee is de horse the rules governing the field, and also the resolutions passed by the Government from time to time, as mentioned above.

14. Much reliance has been placed on the judgment of this Court in Parthapratima Panda Vrs. State of

Odisha, 2019 (II) OLR 786 by Mr. S. Palit, learned Addl. Government Advocate. But the said case is totally different from the present one both factually and legally, reason being in the said case the resolution was issued by the Government of Odisha in General Administration Department on 20.09.2005 with regard to reservation vacancies in favour of physically handicapped persons, sportsmen and ex-servicemen in initial recruitment in State Civil Services and posts, to the effect that the State Government has reserved 3% of the vacancies for physically handicapped, 1% for sportsmen, 3% for ex-servicemen in case of initial recruitment in State Civil Services. Therefore, examining the applicability of the provisions of ORV Act, 1975, since the appointments in that case were contractual in nature for a period of 11 months and were purely temporary and also co-terminus with the scheme, as per the advertisement issued, and Section 3(d) of the ORV Act specifically excludes its application to the appointments to be made under contractual basis, it was held that the provisions of ORV Act is not applicable, until amendment of Section 3(d). Thereby, the reliance placed on the said judgment by the learned Addl. Government Advocate has no application to his contention; rather it supports the case of the petitioners."

9.8. The following observation of this Court in *Brajendra Kumar Jena Vrs. State of Odisha, W.P.(C) No.38099 of 2021, vide Judgment dated 21.10.2024* may have to be referred to:

"9.4. For another reason the ORV Act, 1975 has no application to the present context; for that the State Government has introduced amendment to Section 3[1] thereof by virtue of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Ordinance, 2023 [published in Odisha Gazette, Extraordinary No.1996, dated 19.08.2023], which has been given effect to "at once". Later said Ordinance has been promulgated as the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 [published in Odisha Gazette, Extraordinary No.2543, dated 07.11.2023], which

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[1] Section 3 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, after insertion of sub-section (2) would read thus:

"3. Applicability.—

(1) This Act shall apply to all appointments to the Posts and Services under the State except—

(a) Class-I posts which are above the lowest rung thereof and meant for conducting or guiding or directing Scientific and Technical research;

(b) Class-I Posts which are above the lowest rung thereof and classified as scientific posts;

(c) tenure posts;

(d) those filled up on the basis of any contract;

(e) ex-cadre posts;

(f) those which are filled up by transfer within the cadre or on deputation;

(g) the appointment of such staff the duration of whose appointment does not extend, beyond the term of office of the person making the appointment and the work charged staff which are required for emergencies like flood relief work, accident restoration and relief etc.;

(h) temporary appointments of less than forty-five days duration;

(h-I) those which are required to be filled up by appointment of persons under the rehabilitation assistance given to the members of the family of the deceased or permanent disabled employees who suffer from the disability while in service;

(i) those in respect of which recruitment is made in accordance with any provision contained in the Constitution.

(j) Schematic posts.

(2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or contractual posts or schematic posts which are to be regularized against the sanctioned posts."

came into force with effect from 19.08.2023[2]. Sub-section (2) of Section 3 as inserted by virtue of said amendment does not admit of any ambiguity. Cursory glance at said amendment, which specifies the effective date as 19.08.2023 (prospective amendment), suggests that prior thereto the provisions introduced by way of amendment to the ORV Act, 1975, had no application to contractual engagements for consideration of regularisation against the sanctioned posts.

9.5. *It may be stated that recourse to a subsequent legislation is permissible if there exists any ambiguity in the earlier legislation for the purpose of ascertaining as to whether by a subsequent*

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2 The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 (Odisha Act 10 of 2023) stands as follows:

[Be it encacted by the Legislature of the State of Odisha in the Seventy- fourth Year of the Republic of India, as follows:

1. Short title and commencement.—

(1) This Act may be called the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023.

(2) It shall be deemed to have come into force on the 19th day of August, 2023.

2. Amendment of Section 3.—

In the Odisha Reservation of Vacancies In Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 [Odisha Act No. 38 of 1975], Section 3 shall be re-numbered as sub-section (1) thereof and in sub-section (1) as so re-numbered, —

(i) after clause (i), the following clause shall be inserted, namely:

"(j) Schematic Posts."

(ii) after sub-section (1) so re-numbered, the following sub-section shall be inserted, namely:

"(2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or contractual posts or Schematic posts which are to be regularised against the sanctioned posts."

3. Repeal and Savings.—

(1) The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Schedule Tribes) Amendment Ordinance, 2023 [Odisha Ordinance No.3 of 2023] is hereby repealed.

(2) Notwithstanding the repeal under sub-section (1), anything done or any action taken under the said Ordinance so repealed shall be deemed to have been done or taken under this Act.]

legislation proper interpretation has been fixed which is to be put upon the earlier Act. [Mahim Patram Private Ltd. Vrs. Union of India, 2007 (3) SCC 668]. Glaringly, in the present context, the case of the petitioner emanated prior to the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 came into force. Before said amendment Act, 2023 came into effect, the petitioner had already been eligible for consideration of regularization in service.

9.6. In such view of the matter, the impugned Order of the Director of Health Services, Odisha cannot be sustained inasmuch as non-adherence to the provisions of the ORV Act, 1975 has been taken as a factor to dispel the claim of the petitioner for regularization in service."

Conclusion:

10. Given the delineated scope of consideration for regularization/absorption in service *vis-à-vis* proposition of law as expounded by different Courts, it is apparent that the Office Orders dated 12.05.2010 revoking regularization of the petitioners in service *vide* Office Orders dated 19.06.2009 cannot be held to be tenable in the eye of law.

10.1. As has already been taken note of that while the turn for the authorities to consider the regularisation in service of the petitioners fell, at that stage it is unwholesome for the opposite parties to say that at the time of initial

engagement application of the ORV Act was not examined and followed by the appointing authority. In the case at hand the Selection Committee was satisfied with the unblemished service career of the petitioners and recommended their names, pursuant to which the Office Orders dated 19.06.2009 were issued. Furthermore, the discussion *supra* leads to irresistible conclusion that the application of ORV Act is excluded in the facts-situation of the instant case.

10.2. The petitioners have rendered continuous and uninterrupted service for long years (even before interim protection has been granted by this Court) ranging from 27 to 36 years by now. Therefore, Office Order No.E-31/06/3492/OPHWC, dated 12.05.2010 cannot withstand scrutiny in law.

10.3. This Court cannot be oblivious of view expressed by the Hon'ble Supreme Court of India in the case of *Gujarat Agricultural University Vrs. Rathod Labhu Bechar, (2001) 3 SCC 574:*

> *"17. From the aforesaid, it emerges that the learned Single Judge had concurred with the finding of the Tribunal that the contesting workmen have been working in the appellant University regularly for a long number of years. The existence of permanent nature of work was inferred on this account and also due to the vastness of the appellant's establishment. The regularisation is claimed only in*

respect of Class IV employees. The main objection which was raised earlier and is raised before us, is that a person could only be regularised on any vacant post and if there be one he should be qualified for the same as per qualifications, if any, prescribed. In fact, the Tribunal has held that on the date of the award, most of the workmen had completed 10 years of their service. ***It is also well settled, if work is taken by the employer continuously from the daily-wage workers for a long number of years without considering their regularisation for its financial gain as against employees' legitimate claim, has been held by this Court repeatedly as an unfair labour practice. In fact, taking work from a daily-wage worker or an ad hoc appointee is always viewed to be only for a short period or as a stopgap arrangement, but we find that a new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with a sword of Damocles hanging over their heads or to continue with favoured ones in the cases of ad hoc employees withstalling competent and legitimate claimants.*** *Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, whey they continue to work for year after year, the only option to the employer is to regularise them. Financial viability, no doubt, is one of the considerations but then such enterprise or institution should not spread its arms longer than its means. The consequent corollary is, where work taken is not for a short period or limited for a season or where*

work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is cast to assess the quantum of such work and create such equivalent posts for their absorption.

***

19. What emerges is, all the respondent workmen are eligible for absorption on the facts of this case subject to any eligible qualification under the rule if any. Though no recruitment rules were filed in the proceedings either before the Tribunal or in the High Court but while proposing the scheme a copy of the recruitment rules for various cadres have been placed before us on behalf of the appellant University. This gives in column 1 the serial number, in column 2 the name of the post, in column 3 the pay scale, in column 4 the age-limit and in column 5 the qualification. Serial Number 10 deals with peon and Class IV servants, Serial Number 13 deals with operator-cum-mechanic, Serial Number 14 deals with chowkidar, Serial Number 25 deals with plumber and Serial Number 33 deals with carpenter. This shows that recruitment rules did have these posts in their ambit about which we are concerned, yet no posts were created. ***This proposed creation of post is churned out only after this long***

battle by the workmen as against the appellant. It was not expected from the institutions like the present appellant, especially when it is fully funded by the State Government that this process of absorption should have taken such a long time and to have yielded to it only after this long battle. This legal position is well known not only to the appellant but the State who is funding it, then why to do it only after court's intervention. It is true, creation of post does involve financial implication. *Hence financial health of a particular institution plays an important role which courts also keep in mind. The court does exercise its restraint where facts are such where extent of creation of post create financial disability. But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily-wage workers for a long number of years without absorbing them or creating posts, which constitutes an unfair labour practice.* ***If finances are short, engagement of such daily-wage workers could only be for a short limited period and if continuous work is required it could only do so by creating permanent posts. If finances are not available, take such work which is within the financial means. Why take advantage out of it at the cost of workers?***"

11. The factual background as borne on record tested with the legal position enunciated by Courts without any ambiguity in mind leads to conclude that the Office Order No.E-38/06/3489/OPHWC, dated 12.05.2010

and Office Order No.E-31/06/3492/OPHWC, dated 12.05.2010 indicating withdrawal of Office Orders granting regularisation of the petitioners in service are in conflict with the principles enunciated in the decisions referred to, relied on and discussed *supra.*

12. Under such premises, the Office Order No.E-38/06/3489/OPHWC, dated 12.05.2010 and Office Order No.E-31/06/3492/OPHWC, dated 12.05.2010 passed by the opposite party No.2-Chairman-*cum*-Managing Director of Odisha State Police Housing and Welfare Corporation Ltd. are liable to be set aside and this Court does so.

12.1. As a consequence thereof, Orders of the said Corporation regularising the *ad hoc* services of the petitioners are required to be given effect to. Accordingly, this Court directs the opposite parties to do the needful within a period of three months from date.

12.2. In the result, this writ petition stands disposed of, but in the circumstances, there shall be no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

Signature Not Verified
Digitally Signed
Signed by: LAXMIKANT MOHAPATRA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 13-Mar-2025 16:39:08

High Court of Orissa, Cuttack
The 13th March, 2025//MRS/Laxmikant/Suchitra