

AFR



ORISSA HIGH COURT : CUTTACK

W.P.(C) No.20715 of 2011

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

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- 1.** Nabakishore Nayak
Aged about 51 years
Son of Late Utsav Nayak
At: Narada, P.O.: Turintita
P.S.: Balipatna
District: Khordha.
- 2.** Gangadhar Mandal
Aged about 42 years
Son of Harihar Mandal
At: Sidhamahabirpatna
Purusottam Nagar
P.S.: Kumbharpada
District: Puri.
- 3.** Krushna Bhoi
Aged about 42 years
Son of Jaya Bhoi
At: Narendra Kona
Subhadra Lane
P.S.: Kumbharpada
District: Puri.
- 4.** Purna Chandra Nayak
Aged about 49 years
Son of Bandhu Nayak



At/P.O.: Mahapur, P.S.: Gop
District: Puri.

5. Kailash Chandra Sethi
Aged about 48 years
Son of Bishnu Sethi
At: Kumutisahi
P.O./P.S.: Puri
District: Puri

6. Ramakanta Das
Aged about 40 years
Son of Late Shyamsundar Das
At/P.O./P.S.: Rajnagar
District: Kendrapara.

7. Rabinarayan Samal
Aged about 40 years
Son of Late Bichei Samal
At: Gurula, P.O.: Dudurkote
P.S.: Balimi
District: Dhenkanal. ...

Petitioners

-VERSUS-

1. State of Odisha
Represented though
Commissioner-*cum*-Secretary
Government of Odisha
Housing and Urban Development Department
Secretariat Building
Bhubaneswar, District: Khordha.

2. Commissioner-*cum*-Secretary
Government of Odisha
Finance Department



Secretariat Building
Bhubaneswar, District: Khordha.

- 3.** Director, Municipal Administration
Odisha, Bhubaneswar
District: Khordha.
- 4.** Executive Officer, Puri Municipality
At/P.O./P.S./District: Puri. ... Opposite parties

Counsel appeared for the parties:

- For the Petitioners : Mr. Hrudananda Mohapatra,
Asima Samantaray, M.R. Behera,
Advocates
- For the Opposite party : Mr. Jayanta Kumar Bal,
Nos.1 to 3 Additional Government Advocate
along with
Santosh Kumar Brahma,
Additional Standing Counsel
- For the Opposite party : Mr. Pradipta Mohanty
No.4 Senior Advocate
assisted by
M/s. Pranoy Mohanty,
Sanjib Kumar Sahu and
Prasannajit Pani,
Advocates

P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 21.03.2025 :: Date of Judgment : 24.03.2025

JUDGMENT



Questioning the propriety of instruction of Government of Odisha in Housing and Urban Development Department *vide* Letter No.14449/HUD, dated 13.06.2011 (Annexure-13) and legality of Office Order No.3239, dated 13.05.2011 (Annexure-14) whereby Office Order No.3162, 3165, 3168 and 3171, dated 11.05.2011 were kept in abeyance as well as Office Order No.4113, dated 13.06.2011 of the Puri Municipality (Annexure-15) cancelling Office Order Nos.3162, 3165, 3168 and 3171, dated 11.05.2011 by virtue which the services of the petitioners were regularised, the instant writ petition has been filed to invoke extraordinary jurisdiction of this Court under the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

“Under the aforesaid facts and circumstances of the case, it is, therefore, prayed that this Hon’ble Court may graciously be pleased to:

- (i) quash the Government Order dated 13.06.2011 under Annexure-13 by concurrently holding the same as bad, illegal and not sustainable or maintainable in the eye of law;*
- (ii) quash the Order passed by Puri Municipality vide Order No.3239, dated 13.05.2011 and Order No.4113, dated 13.06.2011 under Annexures-14 and 15 respectively;*



(iii) *pass such other order (s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice;*

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

Facts:

2. Facts, as adumbrated by the writ petitioners, reveal that the petitioners, temporary staff of Puri Municipality, having worked for more than 10 years in Class-IV posts against sanctioned post, claimed to be entitled to the benefit of Scheme for absorption of NMR/DLR/Job Contract worker under regular establishment in consonance with the Finance Department Resolution No.22764—WFI-24/97/F., dated 15.05.1997.

2.1. Said Resolution dated 15.05.1997 reads thus:

*“No. 22764—WFI-24/97-F.
Government of Orissa
Finance Department
Resolution*

Bhubaneswar, dated The 15th May 1997

Subject: Scheme for absorption of N.M.R/D.L.R./Job Contract Workers under Regular Establishment.

*It has been brought to the notice of Finance Department by the different Departments of Government that directives from Hon’ble Supreme Court, High Court and Orissa Administrative Tribunal have been received **for preparation of a***



scheme to absorb the above categories of workers under regular establishment.

As per the above directives, Government have been pleased to formulate the following norms and conditions for the N.M.R./D.L.R./Job Contract Workers.

1. *Separate Gradation/Seniority list shall be prepared by the Appointing Authority for each category of workers determining the length of engagement of a particular person. **The workers should have worked under the administrative control of the Department concerned directly for a minimum period 10 years. The engagement of 240 days in a year shall be construed as a complete year of engagement for this purpose.***
2. *The workers should have been engaged prior to 12.04.1993, i.e., prior to promulgation of ban on engagement of N.M.R./D.L.R./Job Contract Workers, etc. vide Finance Department Circular No.17815—WF-II-180/92/F., dated the 12th April 1993.*
3. *They should have the minimum educational/Technical qualification prescribed for the post against which they would be absorbed.*
4. *They should be within the age limit prescribed for 1st appointment to Government service after deduction of the number of years they have worked under the Department concerned:*



Provided that the age limit can be further relaxed with the approval of Appointing Authority.

5. *Absorption against the post for which regular recruitment rules have been framed will be made in relaxation of the relevant provisions by the competent authority.*
6. *Vacancies reserved for S.C./S.T./O.B.C./ Women Candidate/Physically Handicapped, etc. will be filled up according to reservation Rules issued by Government from time to time.*
7. *Absorption in Class-III & IV posts against the vacant posts shall be made keeping in view the austerity measures issued in Finance Department O. M. No.50791-F., dated the 10th December, 1996 read with O. M. No. 4986, dated the 7th February 1997.*
8. *While filling up the regular vacant posts preference shall be given to work-charged employees first. Where no suitable work-charged employees are available to man the post preference shall be given in the following order, i.e., N.M.R., D.L.R., Job Contract Workers and others.*
9. *On absorption in a regular establishment the worker shall draw the minimum of the time scale attached to the post and other allowances as admissible under Rules from time to time.*



10. *The date of regularisation shall be reckoned as the 1st appointment to the service for pension and other service benefits.*
11. *The authority competent who shall issue the order of regularisation shall certify that the person(s) who are being regularised in this order were engaged as prior to 12th April, 1993, i.e., prior to promulgation of ban issued by Finance Department and this has been agreed to by the Financial Adviser of the Department.*
12. *This order shall supersede all the Orders/Resolutions/Notifications, etc. issued by various Departments of Government for regularisation of N.M.R./D.L.R./Job Contract and other such category of workers.*

Copy of all regularisation order issued in this connection shall be forwarded simultaneously to the Administrative Department concerned and Finance Department.

*By order of the Governor
P.K. Mishra
Principal Secretary
to Government”*

- 2.2. Consequent upon such Resolution, a Letter No.16880—LFS (APL) 39/98 (Pt.)/HUD, dated 15.05.1999 came to be issued by the Director of Municipal Administration addressed to the Executive Officer of all the Municipalities contemplating regularisation of temporary employees who completed 10 years in service with the eligibility as envisaged in said Resolution.



2.3. The Additional Secretary to Government of Odisha in Housing and Urban Development Department *vide* Letter No.36051—MIS-129/2000/HUD, dated 15.12.2000 addressing “All Urban Local Bodies” with regard to “Regularisation of DLR/NMRs in Urban Local Bodies” directed as follows:

“I am directed to invite a reference to the above subject and to say that DLR/NMRs engaged after 19.05.1997 may be disengaged forthwith, if not yet done.

Further, the DLRs/NMRs engaged before 19.05.1997 may continue with consolidated pay in accordance with this Department Circular No.16330/HUD, dated 15.05.1999 and the regularisation of their services in non-LFS cadre may be considered by the respective councils befitting to their qualification in respective posts as well as on completion of 10 years service as DLRs/NMRs against sanctioned posts only. Deviation, if any, will seriously be viewed.”

2.4. The Housing and Urban Development Department contemplated to hold High-Level Meeting to solve problems of Municipalities, Development Authorities and Medical Colleges *vide* Letter dated Memo No.19677/Gen-M&C (Oths)— 10/03 (Pt.-I)/HUD, dated 24.04.2003, pursuant to which in the General Body Meeting of the Puri Municipal Council held on 13.09.2010 it was *inter alia* resolved to regularise the services of temporary employees having completed 10 years of service regard



From

*Smt. Suryamani Behera
Deputy Secretary to Government*

To

*The Executive Officer
Puri Municipality*

Sub.: Unauthorised regularisation of 16 temporary employees by Puri Municipality.

Sir,

I am directed to invite a reference to your Office Order No.3168, dated 11.05.2011 on the subject cited above and instruct you to please cancel the unauthorised regularisation of 16 temporary employees of Puri Municipality made in the above order forthwith under intimation to this Department.

This may please be treated as most urgent.

*Yours faithfully
Sd/- 13.06.2011
Deputy Secretary
to Government”*

2.8. The Puri Municipality issued following Office Orders:

*“Office of the Puri Municipality, Puri
No.3239 (Office Order) dated 13.05.2011*

Office Order No.3162, 3165, 3168 and 3171, dated 11.05.2011 issued by this Office for regularisation of temporary staff in different scale of pay are hereby kept in abeyance until clearance from Government in Housing and Urban Development Department is received in this regard.



*Executive Officer
Puri Municipality
Puri*

*“Office of the Puri Municipality, Puri
No.4113 (Office Order) dated 13.06.2011*

Office Order No.3162, 3165, 3168 and 3171, dated 11.05.2011 issued by this Office for regularisation of temporary staff in different posts and scale of pay and which was kept in abeyance vide Office Order No.3239, dated 13.05.2011 are hereby cancelled as per instruction of Government in Letter No.14449/HUD, dated 13.06.2011.

*Executive Officer
Puri Municipality
Puri*

2.9. The petitioner is before this Court in the instant writ petition challenging the propriety of instruction of Government in Letter No.14449/HUD, dated 13.06.2011 (Annexure-13) and legality of Office Order No.3239, dated 13.05.2011 (Annexure-14) whereby Office Order Nos.3162, 3165, 3168 and 3171, dated 11.05.2011 were kept in abeyance as well as Office Order No.4113, dated 13.06.2011 of the Puri Municipality (Annexure-15) cancelling Office Order Nos.3162, 3165, 3168 and 3171, dated 11.05.2011 by virtue which the services of the petitioners were regularised.



Hearing:

3. This Court by Order dated 10.08.2011 issued notice to the opposite parties and granted stay of operation of Orders in Annexures-13, 14 and 15.
- 3.1. The Puri Municipality entered appearance by executing *Vakalatnama* in favour of Sri Pradipta Mohanty, learned Advocate through the Executive Officer on 21.10.2011.
- 3.2. Though the matter was listed on 20.07.2022, 27.07.2022, 29.08.2022, 08.01.2025 and 06.03.2025 along with *W.P.(C) No.20713 of 2011 (Dhirendra Ku. Das and Others Vrs. State of Odisha and Others)* for the opposite parties to file response, no counter affidavit is forthcoming.
- 3.3. The matter thereafter stood adjourned to 21.03.2025 for hearing on admission. On the date of hearing, *i.e.*, 21.03.2025 also no counter affidavit has been filed by the opposite parties. It is unfortunate to note that even after lapse of considerable period, there is no response from either the State Government or the Puri Municipality.
- 3.4. Since the writ petition has been pending adjudication since 2011 and the opposite parties have not paid any heed to file any response despite adjournments, this Court was left with no option but to proceed with the case on merit.



- 3.5. It is not the case of the opposite parties that they had been under disability nor can the State instrumentalities be said to be under some disability. No explanation has ever been furnished as to why the counter affidavit had not been filed. The opposite parties cannot be permitted to take advantage of their own mistake. A person alleging his own infamy cannot be heard at any forum, particularly so before a Writ Court. The legal maxim '*allegans suam turpetudinem non est audiendus*' fits to the context. If the opposite parties have committed a wrong by not filing the counter-affidavit, they cannot be permitted to take the benefit of their own wrong. (*Vide G.S. Lamba Vrs. Union of India, AIR 1985 SC 1019; Narender Chadha Vrs. Union of India, AIR 1986 SC 638; Jose Vrs. Alice, (1996) 6 SCC 342; T. Srinivasan Vrs. Mrs. T. Varalakshmi, (1998) 3 SCC 112*).
- 3.6. In view of the above, if the counter affidavit is not filed, and no explanation is proffered by the opposite parties, for such lackadaisical attitude this Court has justified reason to decide the case on the basis of the averments in the writ petition, which has been pending since 2011.
- 3.7. This Court expressed the following view in *Pratap Kumar Jena Vrs. Government of Odisha, 2016 SCC OnLine Ori 830*:



“25. *In Ram Bhual Vrs. Ambika Singh, JT (2005) 12 SC 49 = (2005) 12 SCC 121, the apex Court held that where specific pleadings in election petition has not been denied by the opposite party in his written statement while answering the pleadings, applying the doctrine of non-traverse, it can be said that on the pleadings, the case of the election petitioner on this aspect is established.*

26. *In Pyrites Phosphates & Chemicals Ltd. Vrs. State of Bihar, AIR 1998 Pat 57, the High Court of Patna held as follows:*

‘One cannot be allowed to frustrate the process of the Court by adopting the easy option of non-appearing despite valid service of notice. On the basis of doctrine ‘non-traverse’ i.e. acceptance by non-denial, it was held that the claim of the petitioner is not denied but accepted by the respondents.’

27. ***Applying the very principle of non-traverse to the present context, since the opposite parties have not filed the counter affidavit in the present case to controvert the contention raised in the writ application, the facts which have been pleaded by the petitioner are deemed to be admitted. Therefore, any argument advanced by the learned counsel appearing for the opposite parties cannot sustain in absence of any pleadings thereof.***”

3.8. Bearing in mind above exposition of law, this Court heard Sri Hrudananda Mohapatra, learned Advocate for the petitioner and Sri Jayant Kumar Bal, learned



Additional Government Advocate and Sri Santosh Kumar Brahma, learned Additional Standing Counsel for the opposite party Nos.1 to 3 and Sri Pranoy Mohanty, learned Advocate assisting Sri Pradipta Mohanty, learned Senior Advocate appearing for the opposite party No.4-Puri Municipality.

3.9. On conclusion of hearing, the matter stood reserved for preparation and pronouncement of judgment.

Rival contentions and submissions:

4. Reiterating the facts as narrated in the writ petition, Sri Hrudananda Mohapatra, learned Advocate submitted that time and again the Puri Municipality took decision to regularise the petitioners considering length of service and seniority in consonance with the norms specified in Finance Department Resolution dated 15.05.1997 and finally regularised the service of temporary staff working in Class-IV category by Office Order dated 11.05.2011 against vacant posts. Such decision or action of the Puri Municipality could not have been branded as “unauthorised regularisation” by the Government of Odisha in Housing and Urban Development Department.

4.1. Laying stress on the Notice dated 25.11.2010 (Annexure-10), Sri Hrudananda Mohapatra, learned Advocate drew attention of this Court to the following fact:

<i>Name</i>	<i>Designation</i>	<i>Date of engagement</i>
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<i>Nabakishore Nayak</i>	<i>Peon</i>	<i>08.02.1993</i>
<i>Gangadhar Mandal</i>	<i>Helper now Peon</i>	<i>24.04.1995</i>
<i>Krushna Ch. Bhoi</i>	<i>Hammerman</i>	<i>02.09.1993</i>
<i>Purna Chandra Nayak</i>	<i>Helper</i>	<i>03.04.1995</i>
<i>Kailash Chandra Sethi</i>	<i>Light Helper</i>	<i>31.05.1995</i>
<i>Ramakanta Das</i>	<i>Peon</i>	<i>24.09.1993</i>
<i>Rabinarayan Samal</i>	<i>Helper</i>	<i>21.10.1993</i>

4.2. He would, thus, urge that for a long period the Puri Municipality has been exploiting the service of the petitioners which would entail them to claim for regularisation in service and rightly so the Puri Municipality resolved *vide* Council Resolution No.16 dated 13.09.2010 to regularise the service of the petitioners. Therefore, the Office Order dated 11.05.2011 issued in favour of the petitioners by regularising their services does not warrant intervention of this Court.

4.3. Sri Hrudananda Mohapatra, learned Advocate laid strong emphasis that having put in service for more than a decade since their engagement in 1993/1995, when their cases were considered for regularisation and their services, in fact, were regularised against vacant post *vide* Office Order dated 11.05.2011, cancelling the same without assigning any reason, much less cogent reason, would tantamount to arbitrary and whimsical exercise of power. Therefore, he prayed for quashing of the instruction of the Housing and Urban Development Department and the consequential orders passed by the Puri Municipality in obedience to such instruction of the Government of Odisha.



5. Sri Jayant Kumar Bal, learned Additional Government Advocate and Sri Santosh Kumar Brahma, learned Additional Standing Counsel would submit that though instructions were sought for since long, no response is received from the opposite party Nos.1 to 3. However, it is submitted that the impugned Letter dated 13.06.2011 (Annexure-13) issued by the Housing and Urban Development Department, though does not disclose reason, instructions were issued to the Puri Municipality to cancel the Office Orders whereby regularisation of services of the petitioners were accorded inasmuch as such action for regularisation is “unauthorised”.
6. Sri Pranoy Mohanty, learned Advocate assisting Sri Pradipta Mohanty, learned Senior Advocate supporting the Resolutions of the Puri Municipality as enclosed to the writ petition would submit that the action under Annexures-14 and 15 have been taken by cancelling the regularisation in service *vide* Office Order dated 11.05.2011 in consonance with the instruction contained in Letter dated 13.06.2011 of the Housing and Urban Development Department.

Analysis and discussion:

7. By virtue of Finance Department Resolution dated 15.05.1997, the Puri Municipality resolved to regularise the services of those temporary staff (DLR), who were



engaged for 240 days in a year coupled with the condition that they had completed 10 years of service. Consequent upon such resolution, in subsequent meetings it was resolved to regularise the service of petitioners in order of seniority against vacant posts having regard to the Housing and Urban Development Department Letter No.36051, dated 15.12.2000. Accordingly, Office Order dated 11.05.2011 was issued by the Office of Puri Municipality wherein the services of the petitioners, Class-IV employees, were “regularised” “against the vacant posts”.

7.1. Sri Hrudananda Mohapatra, learned Advocate referred to paragraphs 5, 6, 7 and 8 of *Vinod Kumar and others Vrs. Union of India and others, reported in (2024) 1 S.C.R. 1230 = (2024) 9 SCC 327*, 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 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 bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.'

8. ***In the 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."***

7.2. 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."

7.3. 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.”

7.4. 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.

7.5. So far as regularization of services, in a catena of decisions the Hon'ble Supreme Court of India dealing illuminatingly with the concept of regularization, in the case of *Narendra Kumar Tiwari Vrs. State of Jharkhand, (2018) 8 SCC 238*, 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.”*

7.6. 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."

7.7. In *Suwendu 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:

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.’***”*



7.8. 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.

7.9. 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.”

7.10. 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.** ***”*

7.11. 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 matter 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.”

7.12. 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.”

7.13. 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.”

7.14. 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 regularisation like other similarly situated persons.”



7.15. 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 **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.”*

7.16. 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 been pleased to clarify 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.”

7.17. Meticulous reading of Office Order dated 11.05.2011 of the Puri Municipality transpires that the regularisation of services of the temporary staff working in Class-IV category including the petitioners “against the vacant posts” does not suffer from any infirmity in view of principles as propounded in the above discussed cases. The added pointer to this is non-filing of counter affidavit by the opposite parties.

8. Another aspect which needs to be highlighted in the present case is non-availability of reason for this Court to appreciate that there was compelling reason for the Government of Odisha in Housing and Urban Development Department to say that the regularisation of service of petitioners who worked since 1993/1995 with the Puri Municipality as temporary employees is “unauthorised”. Absence of “reason” renders an order leading to civil consequence inoperative, illogical and arbitrary. Bald, cryptic and terse order cannot be held to be tenable in the eye of law.



8.1. Reference be had to following observation of this Court in *Sical Logistics Ltd. Vrs. Mahanadi Coalfields Ltd.*, 2017 (II) ILR-CUT 1035:

“9. *It is well settled principle of law laid down by the Apex Court time and again that the authority should pass reasoned order. Reasons being a necessary concomitant to passing an order, the authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference.*

11. *It is well-settled principle of law laid down by the Apex Court in Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851 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.’

In Commissioner of Police, Bombay Vrs. Gordhandas Bhanji, AIR 1952 SC 16, the Apex Court held as follows:

‘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 acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.’

Similar view has also been taken in *Bhikhubhai Vithalbai Patel and others Vrs. State of Gujarat and another*, (2008) 4 SCC 144 as well as in *M/s. Shree Ganesh Construction Vrs. State of Orissa*, 2016 (II) OLR 237 = 2016 (II) ILR-CUT 237.

In the case of *State of Punjab Vrs. Banddeep Singh*, (2016) 1 SCC 724 the Apex Court held that **the validity of administrative orders/decisions/executive instructions/orders/circulars must be judged by reasons stated in decision or order itself.** Subsequent explanations or reasons cannot be accepted to sustain decision or order.”

8.2. In *Broom’s Legal Maxims* (1939 Edition, Page 97) there can be found a useful principle, *Cessante Ratione Legis Cessat Ipsa Lex*, that is to say,

‘Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself’.



8.3. In *Kranti Associates (P) Ltd. Vrs. Masood Ahmed Khan*, (2010) 9 SCC 496 the legal position has been summarised as follows¹:

“12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262.

47. Summarising the above discussion, this Court holds:
- (a) *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
 - (b) *A quasi-judicial Authority must record reasons in support of its conclusions.*
 - (c) *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
 - (d) *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

¹ See also, *Nareshbhai Bhagubhai Vrs. Union of India*, (2019) 15 SCC 1.



- (e) *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
- (f) *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g) ***Reasons facilitate the process of judicial review by superior courts.***
- (h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*
- (i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- (j) *Insistence on reason is a requirement for both judicial accountability and transparency.*
- (k) *If a judge or a quasi-judicial Authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*



- (l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or ‘rubber-stamp reasons’ is not to be equated with a valid decision-making process.*
- (m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor, (1987) 100 Harvard Law Review 731-37).*
- (n) *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija Vrs. Spain, (1994) 19 EHRR 553 EHRR, at 562 para 29 and Anya Vrs. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, ‘adequate and intelligent reasons must be given for judicial decisions’.*
- (o) *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of ‘due process’.*”

8.4. In *Abhiram Caretaking & Expert Services Vrs. Bharat Sanchar Nigam Limited*, 2017 (II) ILR-CUT 1029 the



importance of assigning reason in detail has been emphasized with the following observations²:

“10. Franz Schubert said:

‘Reason is nothing but analysis of belief.’

In Black’s Law Dictionary, reason has been defined as a—

‘faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions.’

It means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe.

10.1 *In Union of India Vrs. Mohan Lal Capoor, AIR 1974 SC 87 it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. **The reasons assure an inbuilt support to the conclusion and decision reached. Recording of***

² Giving reasons facilitates the detection of errors of law by the Court. : Santosh Kumar Paikray Vrs. State of Odisha, 2016 (II) OLR 1131 (Ori).



reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken in Uma Charan Vrs. State of Madhya Pradesh, AIR 1981 SC 1915, Patitapaban Pala Vrs. Orissa Forest Development Corporation Ltd., 2017 (I) OLR 5; and Banambar Parida Vrs. Orissa Forest Development Corporation Limited, 2017 (I) OLR 625.

11. *In S.N. Mukherjee Vrs. Union of India, (1990) 4 SCC 594 the Apex Court held that keeping in view the expanding horizon of principles of natural justice, the requirement to record reasons can be regarded as one of the principles of natural justice which governs exercise of power by administrative authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority is required to record reasons for its decision.*
12. *In Menaka Gandhi Vrs. Union of India, AIR 1978 SC 597 the Apex Court observed that the reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order, the refusal to disclose the reasons would equally be open to the scrutiny of the court; or else, the wholesome power of a dispassionate judicial examination of executive orders could, with impunity, be set at naught by an obdurate determination to suppress the reasons.”*

8.5. It is stated by Hon’ble Supreme Court in *State Bank of India Vrs. Ajay Kumar Sood, 2022 SCC OnLine SC 1067*



that individual judges can indeed have different ways of writing judgments and continue to have variations in their styles of expression. The expression of a judge is an unfolding of the recesses of the mind. However, while recesses of the mind may be inscrutable, the reasoning in judgment cannot be. While judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles.

8.6. Decision sans reason renders the decision making process arbitrary³. The Hon'ble Supreme Court of India in the case of *State of Punjab Vrs. Bhag Singh*, (2004) 1 SCC 547, observed as follows:

“6. Even in respect of administrative orders, Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 1 All ER 1148 = (1971) 2 QB 175 = (1971) 2 WLR 742 (CA) observed:

‘The giving of reasons is one of the fundamentals of good administration.’

In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree, 1974 ICR 120 (NIRC) it was observed:

‘Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.’

³ See *Steel Authority of India Limited Vrs. Sales Tax Officer*, (2008) 10 SCR 655 = 2008 INSC 799.



Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the ‘inscrutable face of the sphinx’, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The ‘inscrutable face of a sphinx’ is ordinarily incongruous with a judicial or quasi-judicial performance.”

8.7. This Court is tempted to say that the Order dated 13.06.2011 of the Government of Odisha directing cancellation of order of regularisation in service of the petitioners herein against vacant posts involves serious civil consequences and casts a slur and creates a barrier between the employees who have served the Puri Municipality since 1993/1995 and the Government, which has with one line of unreasoned order said that the regularisation is “unauthorised” without indicating the reasons and circumstances. Keeping in mind the gravity of the consequences of action of the Government as well as the Puri Municipality, the authority exercising such power cannot afford to adopt a casual approach.



Graver is the adverse effect of an action of a functionary of the Government, heavier is the obligation on the authority exercising such power to act fairly, reasonably, in a transparent manner and in conformity with the principles of natural justice. This duty becomes very onerous in the background of grave fall out of action of cancelling the order regularising service.

8.8. Recording of reasons is one of the basic and most essential requirements for a functionary, if its order has adverse civil/evil consequences. In the absence of this minimum basic requisite, an order would become vulnerable. In *Oryx Fisheries (P) Ltd. Vrs. Union of India*, (2010) 13 SCC 427, the Hon'ble Supreme Court has observed that if the finding of a *quasi-judicial* (or administrative) authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. The principle that justice must not only be done, but it must manifestly appear to be done as well is equally applicable to the *quasi-judicial* proceeding, if such proceeding has to inspire confidence in the mind of those who are subjected to it. In the considered view of this Court, same principle would apply to the administrative actions also.

8.9. In *CCT Vrs. Shukla & Bros.*, (2010) 4 SCC 785 it is stated as follows:



- “12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. Thus, it will not be far from an absolute principle of law that the courts should record reasons for their conclusions to enable the appellate or higher courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To subserve the purpose of justice delivery system, therefore, it is essential that the courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing.
13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. **A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice.** These principles are not only applicable to administrative or executive



actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. **A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment.** Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. **Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction.** The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. **The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.**



15. *In Siemens Engg. and Mfg. Co. of India Ltd. Vrs. Union of India*, (1976) 2 SCC 981 = AIR 1976 SC 1785 the Supreme Court held as under: (SCC pp. 986-87, para 6)

'6. ... If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.'

16. *In McDermott International Inc. Vrs. Burn Standard Co. Ltd.*, (2006) 11 SCC 181 the Supreme Court clarified the rationality behind providing of reasons and stated the principle as follows:



‘56. ... ‘... “Reason” is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded.

The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in *Poyser and Mills’ Arbitration, In re*, (1964) 2 QB 467 = (1963) 2 WLR 1309 = (1963) 1 All ER 612, **‘proper adequate reasons’**. **Such reasons shall not only be intelligible but shall be a reason connected with the case which the court can see is proper.** Contradictory reasons are equal to lack of reasons.’ [Ed.: As stated in *Bachawat’s Law of Arbitration and Conciliation*, 4th Edn., at pp. 855-56.]

17. In *Gurdial Singh Fijji Vrs. State of Punjab*, (1979) 2 SCC 368 while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, the Court explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was



not legal. In this context, the Court held (SCC p. 377, para 18)

'18. ... 'Reasons' ... 'are the links between the materials on which certain conclusions are based and the actual conclusions'. The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was 'not found suitable' is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List.'

This principle has been extended to administrative actions on the premise that it applies with greater rigour to the judgments of the courts.

18. In State of Maharashtra Vrs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129 while remanding the matter to the High Court for examination of certain issues raised, this Court observed: (SCC p. 130, para 2)

'2. ... It would be for the benefit of this Court that a speaking judgment is given.'

19. In the cases where the courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the court of competent jurisdiction are challenged in the absence of proper



discussion. The requirement of recording reasons is applicable with greater rigour to the judicial proceedings. The orders of the court must reflect what weighed with the court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court.

21. *The principles stated by this Court, as noticed supra, have been reiterated with approval by a Bench of this Court in a very recent judgment, in State of Uttaranchal Vrs. Sunil Kumar Singh Negi, (2008) 11 SCC 205, where the Court noticed the order of the High Court which is reproduced hereunder:*

‘8. ... ‘I have perused the order dated 27-5-2005 passed by Respondent 2 and I do not find any illegality in the order so as to interfere under Articles 226/227 of the Constitution of India. The writ petition lacks merit and is liable to be dismissed.’’

and the Court concluded as under: (Sunil Kumar Singh Negi case, (2008) 11 SCC 205:

‘9. *In view of the specific stand taken by the Department in the affidavit which we have referred to above, the cryptic order passed by the High Court cannot be sustained. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. Vrs. Battan, (2001) 10 SCC 607. About two decades back in State of Maharashtra Vrs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129 the desirability of a*



*speaking order was highlighted. **The requirement of indicating reasons has been judicially recognised as imperative.** The view was reiterated in *Jawahar Lal Singh Vrs. Naresh Singh*, (1987) 2 SCC 222.*

10. *In Raj Kishore Jha Vrs. State of Bihar*, (2003) 11 SCC 519 this Court has held that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.
11. ‘8. ... Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;...’ [Ed.: As observed in *State of Orissa Vrs. Dhaniram Luhar*, (2004) 5 SCC 568, para 8.]
12. *In the light of the factual details particularly with reference to the stand taken by the Horticulture Department at length in the writ petition and in the light of the principles enunciated by this Court, namely, **right to reason is an indispensable part of sound judicial system and reflect the application of mind on the part of the court**, we are satisfied that the impugned order of the High Court cannot be sustained.’*
22. *Besides referring to the above well-established principles, it will also be useful to refer to some text on the subject. H.W.R. Wade in the book*



Administrative Law, 7th Edn., stated that the flavour of the said reasons is violative of a statutory duty to waive reasons which are normally mandatory. Supporting a view that reasons for decision are essential, it was stated:

‘... A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man’s sense of justice. ...

... Reasoned decisions are not only vital for the purpose of showing the citizen that he is receiving justice: they are also a valuable discipline for the tribunal itself.’

24. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. **Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts.** In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage



or after regular hearing, howsoever concise they may be.

25. We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. **Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system.** It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.

27. By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In *Alexander Machinery (Dudley) Ltd.*, 1974 ICR 120 (NIRC) there are apt observations in this regard to say “failure to give reasons amounts to denial of justice”. Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately



considered by the appellate/higher court. Absence of reasons thus would lead to frustrate the very object stated hereinabove.”

8.10. In *Sri Nandlal Tejmal Kothari Vrs. The Inspecting Assistant Commissioner of Income Tax*, (1997) 3 SCR 575 following proposition of law has been laid down:

“The controversy raised in this appeal is covered by the judgment of this Court in C.B. Gautam Vrs. Union of India, (1993) 1 SCC 78 wherein it was held that:

‘31. The recording of reasons which lead to the passing of the order is basically intended to serve a two-fold purpose:

- (1) that the ‘party aggrieved’ in the proceeding before (sic. the appropriate authority) acquires knowledge of the reasons and in a proceeding before the High Court or the Supreme Court (Since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and*
- (2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers.’ ***”*

8.11. With the above perspective of significance of assigning reason, perusal of Letter dated 13.06.2011 (Annexure-



13) of the Housing and Urban Development Department forming the foundation for issue of Office Order dated 13.05.2011 by the Office of Puri Municipality keeping in abeyance the Office Orders regularising the services of the petitioners and subsequent Office Order dated 13.06.2011 cancelling such Office Orders whereby the services of the petitioners were regularised *inter alia* does not manifest:

- i.* as to the factual backdrop and circumstances under which the Office Order Nos.3162, 3165, 3168 and 3171 dated 11.05.2011, whereby services of temporary employees working in the category Class-IV were regularised could be said to be “unauthorised”;
- ii.* there is nothing on record to suggest that the Housing and Urban Development Department considered the Finance Department Resolution dated 15.05.1997 read with Letter dated 15.05.1999 of said Department (Annexure-2), Letter dated 15.12.2000 of the said Department (Annexure-3), Puri Municipal Council Meeting held on 31.03.2008 (Annexure-5), terms of Puri Municipal Council Bipartite Agreement with Puri Municipality Employees’ Coordination Committee in the High-Powered Committee Meeting held on 19.02.2010 (Annexure-8), Puri Municipality



General Body Meeting held on 13.09.2010 (Annexure-6) and Puri Municipal Council Meeting dated 08.04.2011;

- iii. the impugned Order(s) does not depict that the regularisation in services of the petitioner were made in contravention of the list of temporary employees awaiting regularisation in the order of seniority as published *vide* Notice No.7246, dated 25.11.2010.

8.12.No counter-affidavit has been filed since notice in the writ petition was issued by Order dated 10.08.2011 and though the matter stood adjourned from time to time the opposite parties remained callous to justify their action by way of filing response.

8.13.Whereas it is discernible from Order dated 11.05.2011 read with Corrigendum Order dated 13.05.2011 that regularisation in services of the temporary employees working in the category Class-IV for “more than ten years” were made “against vacant posts” taking note of list of seniority *vide* Puri Municipality Notice dated 25.11.2010, this Court is of the considered view that such a meticulous exercise by the Puri Municipality (appointing authority) cannot be said to be “unauthorised”.



8.14. Therefore, cryptic instructions of the Government contained in the Housing and Urban Development Department Letter dated 13.06.2011 (Annexure-13), pursuant to which mechanical Orders dated 13.05.2011 and 13.06.2011 were issued by the Puri Municipality without ascribing any reason to controvert the decisions taken/resolutions passed in the Meetings of the Puri Municipality, cannot be countenanced in law.

Conclusion:

9. Order dated 13.05.2011 and subsequent Order dated 13.06.2011 of the Puri Municipality contrary to its resolutions as referred to in the foregoing paragraphs, but based only on the instruction imparted *vide* Housing and Urban Development Department Letter dated 13.06.2011, being devoid of reason, is amenable to judicial review and this Court warrants it expedient to exercise of power under Article 226/227 of the Constitution of India.

9.1. The principle of reasoned decision in administrative law is oft considered as one of the facets of principles of natural justice, in spirit and in practice. The importance of reasoned decision is derived not only from its aim of showing receipt of justice by the citizens but is also emanated from its existence as a valid discipline for administrative authorities.



9.2. Giving reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the authority itself. Therefore, statement of reasons is one of the essentials of justice. [See, *State of West Bengal Vrs. Atul Krishna Shaw*, AIR 1990 SC 2205 = 1990 Supp.(1) SCR 91; *S.N. Mukherjee Vrs Union of India*, (1990) 4 SCC 594].

9.3. In this context it is pertinent to extract the following from *International Journal of Law Management & Humanities* [ISSN 2581-5369] Volume 4, Issue 3/2021:

“Wade has beautifully summarised the position of reasoned decisions in the context of principles of natural justice and has emphasised on their increasing relevance in the backdrop of judicial review. He says⁴:

*‘The principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless, there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. **Unless the citizen can discover the reasoning behind the***

⁴ H.W.R. Wade & C.F. Forsynth, Administrative Law 436 (Oxford University Press, 2014).



decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. *Natural justice may provide the best rubric for it; since giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all those who exercise power over others.'*

When the statute under which the administrative body is functioning imposes a requirement for giving of reasons for taking a decision, failure to give reasons in such cases will be fatal to the action taken. Thus, such a provision is to be treated as a mandatory provision and non-compliance with such a requirement endangers the decision given by the authority. The duty to give reasons for decisions, where it exists, aims at ensuring the rationality of the decision. It attempts to ensure that the arguments presented to the decision maker will be taken into account and be seen to be taken into account. Such a statutory duty to record reasons is generally enforced by the courts through a writ of mandamus."

9.4. For lack of availability of reason in the impugned instruction in the Letter dated 13.06.2011 and Orders dated 13.05.2011 and 13.06.2011 (Annexures-13, 14 and 15) and rendering no explanation to justify action by filing response in pursuance of notice issued to the opposite parties by Order dated 10.08.2011 despite grant of opportunity on very many occasions by this Court, there remains no other option with this Court but



to quash the Orders dated 13.05.2011 and 13.06.2011 issued by the Puri Municipality and hold that the instruction imparted by the Government in Letter No.13.06.2011 is *de hors* material on record.

9.5. Puri Municipality has taken decision to regularize the services of the temporary employees (Class-IV), who worked for more than 10 years, against vacant posts in order of seniority and adhered to such decision by issue of Office Order dated 11.05.2011 regularising the services of the petitioners. Such action cannot be considered as if against the exposition of law as enunciated by the Courts.

10. Another factor which deserves consideration is that in identical set of fact-situation in respect of Puri Municipality in the context of cancellation of regularisation, Division Bench of this Court had the occasion to consider very same Office Orders being Nos.3162, 3165 and 3171, dated 11.05.2011— involved in the instant case— in *W.P.(C) No.19091 of 2011 (Gobinda Ch. Jee Vrs. Government of Odisha)*, which stood disposed of *vide* Order dated 20.07.2011.

10.1. Pursuant to instruction *vide* Order dated 29.08.2022, the Registry of this Court has placed record of *W.P.(C) No.19091 of 2011 (Gobinda Ch. Jee Vrs. Government of Odisha)* along with copy of Order dated 20.07.2011 and



copies of similar Orders dated 20.07.2011 passed in *W.P.(C) No.19092 of 2011 (Surya Narayan Sahoo Vrs. Government of Odisha)*; *W.P.(C) No.19095 of 2011 (Prasanta Kumar Das Vrs. Government of Odisha)*; *W.P.(C) No.19096 of 2011 (Laxmidhar Dutta Vrs. Government of Odisha)* for reference.

10.2. On scrutiny, it is ascertained that same set of documents as are enclosed to the present writ petition were under annexures in the cases placed for reference. Minute scrutiny of record relating to *Gobinda Ch. Jee Vrs. Government of Odisha, W.P.(C) No.19091 of 2011* it is manifest that the petitioner therein has made the following prayers:

“Your humble petitioner in the circumstances fervently prays:

1. *That the writ petition be admitted for hearing and opposite parties be directed to show cause as to why the writ petition shall not be allowed;*
2. *That if the opposite parties or any of them show no cause or show insufficient cause, the Hon’ble Court may be pleased to quash Annexures-7 and 8 holding the same are bad, illegal and not sustainable in the eye of law and to declare that the petitioner shall continue permanently in the post of Driver and is regularised at least with effect from 13.06.2011 with a fixed scale of pay on the basis of Annexure-5.*



And to pass such other order/orders, direction/directions may deem fit just and proper in the interest of justice.

And for the said act of kindness, the petitioner as in duty bound shall remain ever pray.”

10.3.Verification of documents at Annexures-7 and 8 sought to be quashed in *Gobinda Ch. Jee Vrs. Government of Odisha, W.P.(C) No.19091 of 2011* were the Office Order No.4113, dated 13.06.2011 issued by Puri Municipality and Letter No.14449/MIS/41/2011/ HUD, dated 13.06.2011 of Housing and Urban Development Department respectively. In the present case while Letter No.14449/MIS/41/2011/HUD, dated 13.06.2011 of Housing and Urban Development Department is placed at Annexures-13, Office Order No.3239, dated 13.05.2011 is at Annexure-14, which is similar to Office Order No.4113, dated 13.05.2011, copy of which is available at Annexure-7 to W.P.(C) No.19091 of 2011.

10.4.In such view of the matter, the Order dated 20.07.2011 passed in W.P.(C) No. 19091 of 2011 and identical Orders passed on the very same date in W.P.(C) Nos.19092 of 2011, 19095 of 2011 and 19096 of 2011 may pose relevancy for the present purpose. For better appreciation, the Order dated 20.07.2011 passed in W.P.(C) No.19091 of 2011 is reproduced hereunder:

Heard learned counsel for the petitioner and learned counsel for the State.



In view of the order this Court proposes to pass there is no necessity of issuing notice to opposite party No.4.

*The petitioner, who was working as a Driver in Puri Municipality was regularized by Office Order No.3162 dated 11.05.2011. Thirteen Tax Collectors, two Conservancy Jamadar and one Carpenter were regularized by Puri Municipality vide Office Order No.3168 dated 11.05.2011. **In Annexure-8 the Government of Orissa in Housing and Urban Development Department issued a letter to opposite party No.4 to cancel the regularization of the aforesaid sixteen employees, who had been regularized by office order No 3168 dated 11.05.2011 of Puri Municipality. In compliance of the said direction, the impugned order under Annexure-7 has been passed.** Though the Department directed the Municipality to cancel the regularization of the employees, whose services were regularized vide Office Order No.3168 dated 11.05.2011, with reference to the said letter under Annexure-8 the regularization made in respect of employees in Office Order Nos. 3162, 3165 and 3171 dated 11.05.2011 have also been cancelled. In Annexure-8 the Department never asked for cancellation of the regularization of employees who had been regularized by Office Order Nos.3162, 3165 and 3171 dated 11.05.2011. **Therefore, there was no occasion on the part of Puri Municipality to cancel the regularization of the employees covered under the aforesaid three Office Orders on the basis of the Letter under Annexure-8.***

We, therefore, direct opposite party No.4 to find out as to whether there is any request or direction from the Housing and Urban Development Department for cancellation of



*regularization of employees, who had been regularized by Puri Municipality under Office Order Nos. 3152, 3165 and 3171 dated 11.05.2011. **If there is no such direction from the Department of Housing and Urban Development, action should be taken on the basis of Annexure-8 only in respect of employees, who had been regularized under Office Order No.3168 dated 11.5.2011 and should not be extended to other employees.** Opposite party No.4 (Executive Officer, Puri Municipality) is, therefore, directed to take a decision in this regard within a period of one month from the date of communication of this order and till such a decision is taken the order under Annexure-7 so far as it relates to the petitioner shall not be given effect to.*

The Writ Petition is disposed of.

Requisites along with a copy of this Writ Petition be filed by 22.7.2011 for communication of this order to opposite party No.4.”

10.5.Nothing is brought on record by Puri Municipality to demonstrate that any adverse orders have been passed against the petitioner(s) in W.P.(C) No.19091 of 2011 in pursuance of direction contained in Order dated 20.07.2021 and other analogous cases referred to *supra*. It is also argued by none of the opposite parties that the said Order has been varied, set aside or reversed. Therefore, it is construed that the Order dated 11.05.2011 passed by Puri Municipality has attained finality.



10.6. To buttress his submission on discriminatory treatment in regularisation of service, Sri Hrudananda Mohapatra, learned Advocate referred to paragraphs 4, 8, 9, 12 and 13 of *Ravi Verma and others Vrs. Union of India and others*, 2018 SCC OnLine SC 3860 wherein the following are the observations of Hon'ble Supreme Court:

- “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, Bhubaneshwar 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. ***’



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.***”

10.7. Reference has also been made to paragraphs 4 and 8 of *Raman Kumar and others Vrs. Union of India and others*, 2023 SCC OnLine SC 1018, 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.”

10.8. In the case of *Harbanslal Sahnia Vrs. Indian Oil Corporation Ltd.*, (2003) 2 SCC 107, 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.”

10.9. In such view of the matter, this Court is of the considered view that the present case warrants interference.

11. For the reasons stated on the facts narrated herein above and keeping abreast of legal position as propounded by the Courts referred to and relied on *supra*, this Court is inclined to exercise power under Article 226 to issue writ of *certiorari* by quashing the instruction contained in Housing and Urban Development Department Letter No.14449/MIS-41/2011/HUD, dated 13.06.2011 (Annexure-13), and also the Puri Municipality Office Order dated 13.05.2011 (Annexure-14) and the Puri Municipality Office Order dated 13.06.2011 (Annexure-15) for non-assigning reason.

11.1. This Court also makes the observation that such instruction of the Government and orders of Puri Municipality based on such instruction run counter to the settled legal position as discussed in the foregoing paragraphs.

11.2. As a consequence thereof, the Order No.3171, dated 11.05.2011 (Annexure-11) read with Corrigendum dated



13.05.2011 (Annexure-12) regularising the services of the petitioners is liable to be given effect to.

11.3. The opposite parties are liable to be issued with writ of *mandamus* and accordingly, the opposite parties are directed to work out the entitlement of the petitioners within a period of three months from today and grant all consequential service and financial benefits to the petitioners.

12. In fine, the 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: SUCHITRA BEHERA
Designation: JUNIOR STENOGRAPHER
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 24-Mar-2025 16:55:31

