IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 9636 of 2019
Anjum Ara
Vs.
State of West Bengal & Ors.

With

WPA 9637 of 2019
CAN 1 of 2019 (Old No. CAN 7820 of 2019)
Bikash Senapati
Vs.
State of West Bengal & Ors.

With

WPA 9641 of 2019
CAN 1 of 2019 (Old No. CAN 7821 of 2019)
Asma Begum
Vs.
State of West Bengal & Ors.

With

WPA 9642 of 2019
CAN 1 of 2019 (Old No. CAN 7822 of 2019)
Abu Basar
Vs.
State of West Bengal & Ors.

With

WPA 9643 of 2019
CAN 1 of 2019 (Old No. CAN 7823 of 2019)
Snehanshu Kumar Majumder
Vs.
State of West Bengal & Ors.

With

WPA 9644 of 2019
CAN 1 of 2019 (Old No. CAN 7824 of 2019)
Mehrun Nessa
Vs.
State of West Bengal & Ors.

With

WPA 9645 of 2019
CAN 1 of 2019 (Old No. 7828 of 2019)
Abdul Salim
Vs.
State of West Bengal & Ors.

With

WPA 9646 of 2019
CAN 1 of 2019 (Old No. 7825 of 2019)
Jamila Warsa
Vs.
State of West Bengal & Ors.

With

WPA 9648 of 2019
CAN 1 of 2019 (Old No. 7827 of 2019)
Mujibar Rahaman
Vs.
State of West Bengal & Ors.

With

WPA 9651 of 2019
CAN 1 of 2019 (Old No. 7829 of 2019)
Sk. Roushan Ali
Vs.
State of West Bengal & Ors.

With

WPA 9652 of 2019
CAN 1 of 2019 (Old No. 7830 of 2019)
Salauddin Laskar
Vs.
State of West Bengal & Ors.

With

WPA 9655 of 2019
CAN 1 of 2019 (Old No. 7831 of 2019)
Tabassum Ara
Vs.
State of West Bengal & Ors.

For the Petitioner : Mr. Bikash Ranjan Bhattacharya
: Mr. Samim Ahmed
: Mr. Aniruddha Singh,
: Mr. Ambiya Khatun

For the State respondents : Mr. Jahar lal Dey, ld. AGP
: Mr. Shamim Ul Bari

For the State
in WPA 9642 of 2019 : Mr. Jahar Dutta,
: Mr. Bipin Ghosh

Judgment on **: 13.06.2025**

Rai Chattopadhyay, J. :-

1. 12 (twelve) writ petitions as stated above are heard together and being disposed of by dint of this common judgment, as subject-matter of those are similar.

2. The moot question in these writ petitions is whether the petitioners, who were appointed, though without following any recruitment Rules or Regulations (as those were not formulated at that period of time) and served continuously for more than 10 years solely on contractual basis and not against any sanctioned vacant posts, would be entitled for regularisation against permanent sanctioned vacant posts.

3. The respondent / West Bengal Minorities Development and Finance Corporation [in short "the Corporation"] was established in 1995, pursuant to the provisions of the West Bengal Minorities Development and Finance Corporation Act, 1995, [in short "Act of 1995] with the skeletal managerial persons, like the managing director, the general manager and the chief accounts officer. The subordinate staff were recruited from the open market on temporary and contract basis. At the relevant point of time no recruitment Rules were promulgated or in operation in terms of section 8(3)(b) of the said Act of 1995. The writ petitioners were such appointees, working with the respondent/Corporation, since ***24th September, 2002***. Their engagement with the respondent/Corporation has been extended from time to time, rendering their service with the said Corporation, to be continuous and uninterrupted for several years. According to the petitioners, their services have been indispensable and permanent in nature, in view of the object for which the Corporation was established under the said Act of 1995 and was functioning. For all these years the writ petitioners were made to do under orders, all the same work as would have been done by any permanent employee of the said Corporation.

4. A letter dated ***15th September, 2005***, is worth mentioning, which was forwarded by the managing director of the said Corporation to the Joint Secretary, Monorities Develpoment and Welfare Department, Government of West Bengal, seeking regularisation of the employees of the said Corporation. It has been informed that the appointments were made by the concerned ministry by issuance of open advertisement and upon consideration of the applications received from the respective applicants. Vide the order dated ***29th November, 2007***, 15 temporary and contractual employees of the said Corporation were regularised. Later on, the Corporation has sought for sanction of further number of posts vide letter dated ***22nd August, 2008*** and for regularisation of the other employees of the Corporation vide letter dated ***9th July, 2010***. The petitioner's

representation to the government dated ***30th October, 2012***, has followed thereafter. The writ petitioners have mentioned about the resolution of the meeting dated ***31st October, 2012*** and correspondences dated ***13th March, 2013 and 14th May, 2013*** and the prayer of the Corporation for sanction of 148 posts and regularisation of the petitioners against those sanctioned posts.

5. Vide the departmental order dated ***18th March, 2015***, proposal was made for creation of 45 posts, after recording the finding that 137 posts have been created in excess of the sanction granted by the government and filled up irregularly by the said Corporation.

6. Ultimately, vide order dated ***31st July, 2015***, the respondent/State has sanctioned 54 posts for the Corporation but the prayer for regularisation of the petitioners was not considered. In stead the government has decided to fill up the said sanctioned posts only after framing of Regulations for recruitment, following the due procedure provided therein with further direction that the contractual employees may be replaced as and when the regular employees would be appointed. Thus as per office-note dated ***18th March, 2015,*** upon appointment of the regular employees, the petitioner's contractual services should have been discontinued.

7. The Recruitment Rules namely, the West Bengal Minorities Development and Finance Corporation (Condition of Appointment of Officers and Other Employees) Regulation, 2015, has come into effect vide notification dated ***25th February, 2016***. A recruitment notification has been published being ***No.- 01 of 2019 dated 18th January, 2019*** seeking applications for appointment in the respondent/Corporation, without taking into account the aspect of regularization of the writ petitioners.

8. Hence, being aggrieved the writ petitioners have moved the instant case seeking relief that their service may be regularised, by setting

aside the impugned departmental order dated ***18th March, 2015*** and notification dated ***31st July, 2015,*** to the extent it has restrained the Corporation form regularising the services of the petitioners and the recruitment notification dated ***18th January, 2019***.

9. The petitioners have stated that they being appointed by open advertisement, in absence of any specific Rules for appointment and having allowed to continue to work continuously for a considerable period of time and having discharged permanent nature of duties, should have been regularised against the said permanent posts created. In stead, in their case the respondent has created embargo and made their service subject to and till the time regular appointments are made, which according to the writ petitioners is illegal and unsustainable. The petitioners have stated that other similarly circumstanced persons who are junior to some of them, have been regularized. They say that thus the respondents have exercised both discriminatory treatment and arbitrariness vide the impugned departmental order dated ***18th March, 2015*** and notification dated ***31st July, 2015,*** for which both are liable to be set aside to the extent it has restrained the Corporation form regularising the services of the petitioners. That consequently the recruitment notification as above, is also liable to be set aside.

10. Mr.Ahmed appearing for the petitioners have emphasised that in 2007, some employees of the Corporation, only similarly situated as the present petitioners, were regularised in service. Further that the Corporation itself has principally agreed for regularisation of the petitioners and communicated its decision to the State, which is the appropriate authority for sanction of posts. It has been submitted that the duties discharged by the petitioners are essential for the functioning of the Corporation and is perennial in nature. In the matter of regularisation of the employees similarly circumstanced with the present petitioners, discrimination has also been made, in

so far as persons junior to the present petitioners have been given permanent status, whereas the petitioners who have been working since prior dates, have been ignored.

11. It has been stated that non-regularisation of service of the petitioners, despite fulfilling the essential duty of a permanent employee, though others of similar kind having been made permanent, constitutes violation of fundamental right of the petitioners as guaranteed under Article 14 of the Constitution of India. That, the petitioners having discharged responsibilities akin to the permanent employees, and having been denied with the equal pay and treatment, has subjected them to discrimination and inequal treatment amongst the equals. It is submitted that there is no justifiable reason as to why the petitioners should be treated otherwise than the persons who have already been regularised, as all of them have been similarly situated. It is submitted further that the petitioners having been recruited at the time of exigency and their labour having been utilised when the Corporation needed it and after having rendered their service continuously and discharging duties which are perennial in nature, not regularising the service of the petitioners would amount to exploitation and against the rights guaranteed to a citizen under Articles 14 and 23 of the Constitution.

12. It has been argued on behalf of the petitioners that where the employees are engaged in permanent posts for an extended period as temporary or contractual workers, despite the existence of substantive permanent vacancies, and where their services are essential for the functioning of the organisation, the continued temporary or contractual engagement is illegal and unjustified, that such employees are entitled to regularisation of their services. That, imposition of condition while sanctioning the posts is not only to jeopardise the Corporation's autonomy to manage its own workforce but also arbitrary and unreasonable in the facts and circumstances

of the instant case. The petitioners have stated that the impugned orders as above have defied the principles of natural justice as well as fairness. It has been submitted further that upholding the petitioner's right to regularisation aligns with the broad public policy and objectives, including non-exploitation of workforce, promoting stable employment, fostering economic security and ensuring social justice. Regularising the petitioners service serves the public interest by maintaining the efficient functioning of the Corporation and upholding the dignity and rights of its employees. It is submitted further that non-regularisation of the service of the petitioner amounts to violation of article 23 of the Constitution, particularly when the respondent authorities are supposed to be the model employers. For the reasons as stated above, the petitioners have prayed for setting aside of the impugned order and notification as mentioned above and for issuance of an order, directing their regularisation in service.

13. The following judgments have been referred to by the writ petitioners in this case :

(i) Central Inland Water Transport Corporation Limited vs Brojonath Ganguly (1986) 3 SCC 156;
(ii) Chandraprakash Madhabrao Dadwa and Others vs Union of India and Others AIR 1999 SC 59;
(iii) Secretary of Karnataka vs Uma Devi (2006) 4 SCC 1;
(iv) State of Karnataka and Others vs M.L.Keshari and Others (2010) 9 SCC 247;
(v) Nihal Singh and Others vs State of Punjab and Others (2013) 14 SCC 65;
(vi) Amarendra Kumar Mahapatra vs State of Orissa (2014) 4 SCC 583;
(vii) Amarkant Rai vs State of Bihar (2015) 8 SCC 265;
(viii) Narendra Kumar Tiwari vs State of Jharkhand (2018) 8 SCC 238;
(ix) North Delhi Municipal Corporation vs Harleen Kaur & Others (Delhi High Court Order dated 20th November 2018 passed in WP(C) 3692 OF 2016);

(x) North Delhi Municipal Corporation vs Harleen Kaur & Others AIR Online 2019 SC 1990;
(xi) Mahandi Coalfields Limited vs Brajrajnagar Coalmines Workers Union 2024 SCC Online SC 270;
(xii) Board of Trustees for Syama Prasad Mukherjee Port vs Union of India and Others 2024 SCC Online Cal 2759;
(xiii) Sylvia Bongi Mahlangu South African Domestic Service and Allied vs Minister of Labour the Constitutional Court of South Africa.

14. Mr.Dey learned AGP has represented the State respondent, in this writ petition. The respondent has supported the impugned order and has sought for dismissal of the writ petitions. The respondent has not denied the fact of the petitioner's contractual employment with the respondent/Corporation. Mr.Dey learned AGP has submitted that the petitioner's prayer for regularisation has already been rejected by the State vide letter dated ***18th March, 2015***. He has further relied on the Supreme Court's verdict in ***Uma Devi's case (supra)*** to submit that steps are to be taken for regularisation as a one time measure. He says that regularisation of the contractual employees cannot be a practice to be followed perpetually. Since once, on ***29th November, 2007,*** contractual employees of the Corporation has been regularised, therefore, according to the respondent, there would be no further scope for regularisation of the present writ petitioners. It has been further submitted that the petitioner's induction in service was not done in compliance with any Rules or Regulation to govern the process. In such view of the fact their appointment is only illegal. ***Uma Devi's case (supra)*** has again been mentioned in this connection that in the same, the Court has directed for regularisation of service of those whose appointment might have been irregular, but the Court has directed further that no such relief can be granted to those persons whose appointment has been through an illegal process. It is stated that the temporary nature of appointment was known to the petitioners at the time of induction and they subsequently

cannot claim regularisation in the respective posts. Hence, Mr.Dey has contended that the present writ petitions are liable to be dismissed.

15. Certain facts are required to be discussed first. The petitioners have stated that the respondent Corporation was established in 1995, with the three managerial posts of a managing director, a general manager and a chief accounts officer. The petitioners were inducted in service on contract basis in order to implement the program of respondent Corporation for self employment, vocational training, and educational development of the minority community in terms of the scheme of the West Bengal Minorities Development and Finance Corporation Act, 1995. The fact that the petitioners were employed on contract for a fixed period with the respondent Corporation, is admitted by the respondent/Corporation in this case. They say that the petitioner's engagement was for a fixed period and continuation thereof would not be a rule but as per exigency, to which the petitioners could claim no right. The Corporation in their affidavit-in-opposition has though accepted that the petitioners have been discharging the duties related with the core object of the Corporation by working out plans for self employment programmes, skill development, and other programs and other related and ancillary works there of, but in effect, has denied as regards the claim of the writ petitioners to have any vested right over the posts to which they have been appointed, since the posts were not the sanctioned posts and the appointments were not made in terms of any prescribed Rules or Regulations for the same. Also the respondent says that the specific job done by the writ petitioners is not of permanent nature but is centered around and depending upon the nature of programme of the Corporation on which they have been working. Therefore, the respondent has made out a case that the petitioners are of a separate class than those who work akin to a permanent employees who discharges permanent nature of duty in the Corporation. According to the respondent, those two

groups of employees cannot be equated or the petitioners cannot claim equal benefit like the others.

16. An undisputed fact is that at the time of induction of the present writ petitioners into the service on 24th September, 2002, there has not been any Rules promulgated for governing such recruitment in the respondent/Corporation. Such Rules/Regulations in the form of the *West Bengal Minorities Development and Finance Corporation (Condition of Appointment of Officers and Other Employees) Regulation, 2015,* has only come into effect vide notification dated ***25th February, 2016***. 15 posts of support staff of the Corporation were sanctioned firstly, vide notification dated ***29th November, 2007***, that is before promulgation of the said Regulations. Thereafter in the year 2015, vide the impugned departmental order dated ***18th March, 2015*** and the notification dated ***31st July, 2015,*** 54 more posts have been sanctioned. However, it has been directed that with the employment of the regular staff in the Corporation as per the Regulations dated ***31st July, 2015,*** the temporary and contractual employees should be discontinued.

17. Therefore, admittedly before ***29th November, 2007,*** there was no sanctioned posts in the respondent Corporation. Several persons were therefore engaged temporarily on contract basis and for a specified period of time. They have been engaged for carrying on the functions of the Corporation as entrusted by the statute on the same. The duty roster annexed with the writ petitions and the statements made by the petitioners therein are sufficient to show the kind of job which were being discharged by the petitioners in the said Corporation. Admittedly also the petitioners have been engaged in working out plans for self employment programmes, skill development, and other programs and other related and ancillary works there of which are the core areas of functioning of the Corporation in terms of the scheme of the statute, by dint of which the same has been created. Thus, the functions discharged by the

petitioners cannot be termed as temporary in nature. The Corporation basically would not have any existence without the functions in which the petitioners take part, as its creation is for the object to carry out those functions only. To this extent, the stand of the respondent that the petitioners do discharge duties of temporary and only emergent in nature which do not have a tenet to be of permanent nature of duty under the said employer, does not inspire much confidence in the mind of this Court. Secondly, admittedly, the petitioners have been allowed to work since the date of their appointment, without any interruption with the respondent Corporation. This at one hand proves the perpetual nature of the job they have been discharging and on the other hand shows that the respondent/Corporation has utilised their labour to carry on the functions of the Corporation for prolonged period, continuously and uninterruptedly, though without reciprocating the petitioners with permanent status. Finally, creation of posts by the respondent/State, though belatedly in the year 2015, for the same job description as have been discharged by the petitioners, should rest all the disputes at peace in this regard, that the duties discharged by the petitioners in the respondent/Corporation is not spare-able, so far as functions of the Corporation are concerned. Long standing, continuous work parallels that of permanent employees. The duties discharged by the present petitioners are evidently perennial rather than sporadic or project-based. Or else there would not have been any requirement by the respondent/Corporation to continue with their service under the grub of a contractual and time bound engagement, though extracting from them only continuous and perennial nature of job. Also that even after regularization of 15 employees in the year 2007, the petitioners have been carried on with till now as contractual, though treated at par with permanent employees but yet deprived of the monetary and other benefits being paid to permanent employees. In the even circumstances this Court has held in the

case of Board of Trustees for Shyama Prasad Mukherjee Port (supra) that

> ***"49. Non-regularization and engagement on a temporary basis in permanent posts and for over 20 years, would also indicate that the work done by the said workmen is perineal in nature. Their services were and are vitally necessary for the functioning of the Port Trust. The continued engagement of the said workmen as temporary or contractual is therefore indeed illegal and unjustified."***

18. The Court in this regard also seeks to rely on a very recent judgment of the Supreme Court in ***Shripal and Another vs Nagar Nigam Ghaziabad*** reported in ***2025 SCC Online SC 221*** in which the Court has expressed in the following words :

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

19. With reference to ***Uma Devi's case (supra)*** it is the contention of the respondent that no contractual employee can claim permanent absorption without adherence to the constitutional requirements and availability of duly sanctioned vacancies. In this regard it is worth mentioning the relevant portion of ***Shripal's case (supra***), which is as follows:

> "***14. The Respondent Employer places reliance on Umadevi (supra) to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules***

> ***providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.***"

20. The right against exploitation is given in the Indian Constitution as a fundamental right enshrined in the Part-III to safeguard individuals from practices such as slavery, beggarism, child labor, bonded labor, and other forms of forced labor. These are also part of the basic structure of the Indian constitution referred to in Kesavananda Bharati v. State of Kerala (1973). Articles 23 and 24 of the Constitution ensure human dignity by prohibiting such exploitative practices, underscoring the nation's commitment to protecting its citizens from exploitation in all its forms. Another recent verdict by the Supreme Court may be mentioned in this regard in the case of ***Jaggo vs Union of India 2024 SCC Online SC 3826***. The following portion thereof may be quoted as the principles narrated therein applies to this case also:

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

not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

** ** **

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

- ***Misuse of "Temporary" Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often 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."***

21. The Court has also recorded its findings there in the following manner:

> ***"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."***

22. Fair employment practices by the government institution, is what the law and the rules of fair play and fair practice demand. The Supreme Court in the case of ***Uma Devi (supra)*** has emphasized requirement to prevent any back door entry in government services. In this regard the Court in ***Uma Devi (supra)*** has mentioned that " ***..... the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of 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 foundation on which the Court has distinguished between '*illegal*' and '*irregular*' appointments, is on the basis as to whether the person has been appointed against sanctioned vacant post and has continued therein without the intervention of any order of Court or Tribunal.

23. The question in this case therefore is how should one address the appointment of the present petitioners with the respondent/Corporation; whether their appointments are '*illegal*' or '*irregular*' appointments as per law settled in ***Uma Devi's case (supra)***. The Court finds that if there had been sanctioned vacant positions in the respondent/Corporation at the time of the petitioners' appointment, the issue of their being not appointed to those positions may have been effectively contested, referencing the judgement of ***Uma Devi (supra)***. The fact in this case is a little different. At the time of appointment of the petitioners there were no

posts sanctioned in the Corporation and this is an admitted fact in the instant case. The records have revealed that 15 posts were regularized in 2007 [vide letter dated 29th November, 2007] and thereafter in 2015 [vide letter dated 31st July, 2015], 54 posts have been created in different categories. The Recruitment Rules have come into effect only in the year 2016. Though function of the Corporation was indispensable since from its inception in 1995, that too in terms of the scope and object as enumerated in the Act of 1995. To discharge those duties and functions the Corporation appointed the petitioners temporarily on contract basis for the reason that there was no post sanctioned at the relevant point of time, to appoint any employee permanently. Had it been otherwise and had the Recruitment Rules been promulgated at that point of time there would not have been any necessity to appoint any person on contract basis. Therefore, the distinction made between the '*irregular*' and '*illegal*' appointments, as enumerated in ***Uma Devi's case (supra)***, would not be applicable in the factual background of this case. In this regard the observation of the Supreme Court in the case of ***M.L.Keshri (supra)*** is also worth noting, which is as follows:

> ***"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3) [(2006) 4 SCC 1] , 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."***

24. On the basis of the particular facts of this case, the Court therefore is faced with the question whether induction of the petitioners in service can be treated as '*illegal*' or '*irregular*' or as a '*back door entry*';

25. Firstly, it should be mentioned that the petitioners have been working continuously and uninterruptedly, on temporary basis, since from the date of their respective appointments, till date. Their appointment or continuation in service has not been subject to any Court order but due to voluntary extension of their contract period by the Authority from time to time. These facts are not disputed in this case. Previously in this judgment it has been discussed that the petitioners were engaged and have served perennial nature of duties. It is more so evident as the petitioners have been engaged when there was no post created to discharge those perennial nature of duties in the Corporation. It is not that in spite of there being sanctioned vacant posts the petitioners have been engaged temporarily on contract basis, against those sanctioned vacant posts. Absence of any sanctioned posts in the Corporation tantamount the petitioners' appointment against the substantive vacant positions of staff in the Corporation, without which the Corporation could not have functioned.

26. To assume a statutory body, to have discharged its statutory functions for all these years, since from the date of its coming into being, without any requirement of support staff is inconceivable and not plausible. Therefore, when the requirement subsisted and any person is made to labour in those essential and compulsory areas of work which though are substantive, but are marred with vacuum due to non availability of any permanent employee, such person

cannot be treated as only temporary and sporadic. Rather the principles of fair play and effective public policy should encompass such individuals necessitating equitable treatment in employment through the regularization of their services. Or otherwise, it would amount to misuse of temporary level as envisaged in ***Jaggo's case (supra)***. Therefore, the petitioner's appointment cannot be termed as '*illegal*', as it has been envisaged in ***Uma Devi's case (supra)***. A fair practice by the employer therefore would demand that temporary but long standing engagement of these persons be immediately regularized by the said employer. On the background of the specific facts of this case, it appears to be wrongful denial of employment and regularization of the petitioners, which would not be maintainable as held by the Supreme Court in ***Mehendi Coalfields Limited's case (supra)***.

27. The other point raised by the respondent in this case is that in accordance with the dictum in ***Uma Devi's case (supra)***, the process of regularization should be a one-time measure and in case of the respondent/Corporation regularization of temporary employees has already been done vide the order dated ***29th November, 2007***. Hence no other persons can be regularized in accordance with law. Pertinent is to note that in the order as above only 15 posts were regularized whereas there was no explanation as to why the other employees on contract including the present petitioners were not regularized then or regarding what might be the differential factor to give preference to those 15 persons who have been similarly placed with the persons regularized vide the said order. It is a matter on record that employee junior than the petitioners has been regularized in the said order. It is also best known to the Authorities and unknown to every body else as to what has prompted the said Authorities from the date of appointment of the petitioners, particularly from 2007 till 2015, not to create any posts in spite of several requests being made in this regard and also to keep on extracting labour from the petitioners without regularizing them in

service. This is a glaring manifestation of sheer arbitrariness having been exercised and an arbitrary action is not meant to be sustained in the eye of law. To discriminate the similarly situated persons without any justifiable reasons is also forbidden under the law. The Corporation is required to undertake fair and logical policies for employment and therefore cannot dispense with the service of the petitioners when they have crossed their employable age, after extracting service during their prime employable age. It would be beneficial if the relevant portion of judgment of Supreme Court, in ***Nihal Singh's case (supra)*** be quoted here:

> ***"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."***

28. The Regulations dated ***31st July, 2015*** and the relevant note-sheet dated ***18th March, 2015*** thereby directing for discontinuation of the temporary and contract based employment of the petitioners, in stead of regularizing them, appears to be discriminatory, arbitrary and illegal. There would not be any justifiable reason as to why in the year 2007 or thereafter the petitioner's services have not been regularized still their labour has been extracted without appropriate remuneration or regularization of their service. It is also a matter of record that in the meeting dated ***31st October, 2012*** of the respondent/Corporation and the Joint Secretary, Minority Affairs Department, it has been resolved that service of the petitioners is eligible for regularization. Evidently at a later point of time such

decision is overturned, without any cogent reason being shown for the same, which cannot be sustained in the eye of law.

29. The other aspect argued on behalf of the respondent in this case is the alleged delay of the petitioners to file the instant case. It has been submitted that the petitioners have come after inordinate and unexplained delay to file this case, for which the present writ petitions may not be sustainable. The record reveals that the recruitment ***notification No.- 01 of 2019 dated 18th January, 2019*** has been challenged in these writ petitions. The petitioners have prayed for setting aside of the said notification. Therefore, the Court finds no delay in filing the writ petitions and such argument by the respondent, is only unsubstantiated.

30. All the discussions as above, leads to the only finding that the writ petitioners having served the respondent/Corporation on contract basis and temporarily though continuously and uninterruptedly, for more than 10 years in the substantive positions therein, and their appointments not being back door entries as at the time of their induction there were no posts sanctioned for the Corporation, and further the petitioners having been unlawfully discriminated from the other similarly situated employees in case of regularization of their service, would be eligible for regularization in the posts sanctioned later on for the respondent/Corporation in the year 2015.

31. Hence, these writ petitions should be allowed.

32. The 12 writ petitions as mentioned above are allowed, with the following directions:

I. The impugned office-note dated ***18th March, 2015*** is set aside;

II. The impugned notification dated ***31st July, 2015,*** is set aside to the extent it has restrained the Corporation form regularising the services of the petitioners;

III. The impugned recruitment notification dated ***18th January, 2019*** is set aside;

IV. The respondents, Corporation as well as the State, shall take immediate appropriate measures for regularization of the writ petitioners;

V. The writ petitioners shall be regularized in service, within a period of 3 weeks from the date of communication of copy of this order, with fixation of their pay;

VI. Arrear salary shall be paid to the writ petitioners within a period of 2 months from the date on which the order for their regularization is issued;

VII. The respondents would be at liberty to publish notification for recruitment, for the residual vacant sanctioned posts, after issuance of the order of regularization of the writ petitioners.

33. The writ petitions as above are thus allowed and disposed of.

34. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)