



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 4478 OF 2022 (S-REG)



BETWEEN:

- 1 . SRI BHAGWAN DAS
S/O SESAPPA, AGED ABOUT 52 YEARS
R/O VISHALAKSHI COMPOUND,
PEDAMALE HOUSE PEDAMLE POST
MANGALORE-575029
DAKSHIN KANNADA DISTRICT
- 2 . SRI RAMESH, S/O LATE BRAHMDAS
AGED ABOUT 47 YEARS,
C/O SHANKAR, DRIVER KANA
SURATHKAL-575014
- 3 . SRI K N PRAVEEN
S/O LATE NARAYANA BANJERA
AGED 44 YEARS,
C/O B GANGADHARA, NEAR VINAYAKA TALKIES
BANTWAL-574219
- 4 . SRI VAMAN
S/O LATE SHIPOJARI
AGED ABOUT 55 YEARS
SONABA SADANA MAILA GUDDE
VIDYANAGAR, PANJIMOGAS POST
MANGALORE-575013
- 5 . SRI MANJUNATH
S/O THOMA, AGED ABOUT 47 YEARS,
NADYAPADAVU POST AND VILLAGE
MANGALORE TALUK AND DISTRICT





- 6 . SRI K SUDHEER, S/O K CHANDAPPA
AGED ABOUT 48 YEARS
M K B SHETTY COMPOUND,
ALAPE KAMBADI, ALAPE
MANGALORE-575008
- 7 . SRI SHAJIL KUMAR
S/O RAGHAVAN, AGED ABOUT 47 YEARS
M S B PRASAD NEAR MUTHAPPAGUDI
SHAKTHINAGAR, MANGALORE-575016
- 8 . SRI JAGADEESH
S/O BOOBA MESTRY
AGED ABOUT 49Y EARS,
GANGANIVASU KOTUKANI ROAD
BEJAI POST, MANGALORE-575004
- 9 . SRI J MOHAN DAS
S/O J VISHWANATH
AGED ABOUT 55 YEARS,
DR VISHWANATH SUVARNA COMPOUND
JEPPU MAHAKAL IPODAPU
MANGALORE-575002
- 10 . SRI PRAVEEN
S/O LATE SEEN KUKYAN
AGED ABOUT 51 YEARS,
SEENA NILAYA, DEREBAIL KONCHADY
MANGALORE-575008
- 11 . SRI SANTOSH
S/O SUBBA SALYAM
AGED ABOUT 51 YEARS,
BOOKAPATNA BANGARE
MANGALORE-575003
12. SRI PRAVEEN SHETTY
S/O MARAPPA SETTY
AGED ABOUT 48 YEARS,



THANTHI COMPOUND
BALEBAIL KAPILAD BEJAI
MANGALORE-575004

13. SRI K GOVIND
S/O LATE DASAPPA
AGED ABOUT 58 YEARS,
KAVOORU MILLAKDU 4TH MAIN,
KAVOOR POST, MANGALORE-575015
14. SRI HARIYAPPA
S/O LATE ALITHAPPA GAIGA
AGED ABOUT 60 YEARS,
SANJAYANAGAR SHAKTHINAGAR
MANGALORE-575016
15. SRI BABU BANJER
S/O LAGE ANGARA
AGED ABOUT 61 YEARS,
BOLOOR KALLISHWAR COMPOUND PARAPPU
MANGALORE-575003
16. SRI PURUSHOTHAM KOTYAN
S/O DOOMPPA POOJARY
AGED ABOUT 61 YEARS,
DEREBAILU COMPOUND
LOWER KONCHADY
MANGALORE-575008

...PETITIONERS

(BY SRI. GOWTHAMDEV C.ULLAL, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER
OFFICE OF THE DEPUTY COMMISSIONER
MANGALORE-575001
MANGALORE TALUK
DAKSHINA KANNADA DISTRICT
2. THE COMMISSIONER,



MUNICIPAL CORPORATION
MANGALORE-575003
DAKSHINA KANNADA DISTRICT

3. SRI LINGEGOWDA
WORKING AS EXECUTIVE ENGINEER
MANGALURU MUNICIPAL CITY CORPORATION
MANGALORE-575003
PRESENTLY WORKING AS
EXECUTIVE ENGINEER
SMART CITY MANGALURU CITY MUNICIPAL
MANGALORE-575003

...RESPONDENTS

(BY SMT. B.P.RADHA., AGA FOR R-1;
SRI. HAREESH T.BHANDARY., ADVOCATE FOR R-2;
SMT. SAHANA., ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE COMMUNICATION LETTER BEARING No.EST(1)/CR53/2015-16 DATED:05.12.2019 VIDE ANNEXURE-W ISSUED BY 2ND RESPONDENT, ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.04.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

CAV ORDER

I. PRAYERS SOUGHT:

The petitioners who are rendering service to the Mangalore Mahanagara Palike, through a contract have sought for the following reliefs:-



(i) Setting aside the communication letter bearing No.EST(1)/CR/53/2015-16 dated 05.12.2019 at Annexure-W, refusing to recommend case of the petitioners for regularisation of their service while recording a finding that the petitioners were not in compliance with the tests laid down in the judgment of the Apex Court in **State of Karnataka and Others v. Umadevi and Others¹ [Umadevi]**;

(ii) Petitioners have sought to set aside order of the Deputy Commissioner bearing No. DKDC/DUDC/MUN(3)/CR234/2017 C.No.27060 at Annexure-X dated 12.12.2019, whereby, the Deputy Commissioner had reiterated the stand of Mangalore Mahanagara Palike and has issued

¹(2006) 4 SCC 1



an endorsement reiterating that petitioners service could not be regularised.

(iii) Petitioners have sought for issuance of writ or direction in the nature of mandamus to regularise and absorb services of the petitioners in accordance with the order bearing No.MUN(3)/ESTCR/75/2015-16 C.No. 163875 dated 28.07.2016 at Annexure K which was an order to regularise services of 79 employees of the Mangalore Mahanagara Palike whose case was similar to that of the petitioners.

II. BRIEF FACTS :

2. The petitioners claim to have been working for the respondent No.2 - Mangalore Mahanagara Palike as contract employees, working as valvemen and pump-operators for about 28 years. It is asserted that they have been performing work of a regular employee of the



Mangalore Mahanagara Palike which had availed services of the petitioners through contractors, despite having vacant posts.

3. The petitioners had made out a representation to the respondent No.2 - Palike which was taken note of and a communication forwarded to the Principal Secretary, Department of Urban Development, recommending regularisation of services of the petitioner in terms of Annexure - A dated 28.11.2014.

4. In terms of the office note at Annexure-C dated 22.01.2016, the Mangalore Mahanagara Palike had observed that the petitioners numbering 16 were working on contract basis from a long period of time. The Government of Karnataka on 02.11.2006 had abolished the contract labour in the Water Supply Department of the Mangalore Mahanagara Palike after taking note of the report of the Karnataka State Labour Advisory Board in terms of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act').



5. It was however observed that except the attendance registers for the year 1991 and 1992, remaining documents were not available. However, it was specifically observed that the 16 workmen named in the table were still working on contract basis for the Mangalore Mahanagara Palike.

6. In terms of Annexure-D dated 01.03.2016, the Mangalore Mahanagara Palike had addressed a communication to the Deputy Commissioner, Dakshina Kannada District, Mangalore, furnishing the details of each of the 16 petitioners along with a checklist for further action.

7. In terms of Annexure-J, meeting was held under the Chairmanship of the Deputy Commissioner regarding the works of the Mangalore Mahanagara Palike. It was noted that the recruitment committee headed by the Deputy Commissioner in the respective districts were granted permission for filling up of the posts. The said



proceedings also noted the existing vacancy of 89 posts as regards valvemen. It was further resolved that action to be taken for regularisation in terms of the Judgment of the Apex Court rendered in **Umadevi (supra)** as regards those employees appointed after 01.01.1986 and who had completed ten years as on 10.04.2006.

8. The Deputy Commissioner on 28.07.2016 had resolved to regularise service of 79 employees who had fulfilled four conditions laid down in **Umadevi (supra)**. In terms of Annexure-M, dated 06.10.2016, there was a revised list which recorded a finding that only 62 employees had fulfilled the four conditions while excluding the case of the petitioners on the ground that the details of the 16 valvemen (i.e., petitioners) were not available. Accordingly, details of only 54 employees excluding the petitioners were sent to the Deputy Commissioner.

9. The representations of the petitioners to extend the benefits of regularisation on the principle of parity was turned down by the Mangalore Mahanagara Palike in terms



of proceedings at Annexure-W, which is the communication by the Mangalore Mahanagara Palike to the Deputy Commissioner and the Deputy Commissioner accepted such recommendation and issued an endorsement at Annexure-X declining to regularise their services.

III. ANALYSIS:

10. The petitioners have contended that the practice of engagement of labour by way of contract by the Mangalore Mahanagara Palike was protested by the staff and the Municipal Staff Union represented by its President had approached the High Court in W.P. No.4349 & 4461-4485/1997 which came to be disposed off on 12.01.2000 directing the Labour Commissioner to issue notice regarding abolition of contract labour and submit report to Government, thereafter, to pass appropriate orders regarding abolition of contract labourers in accordance with the Act.



11. Subsequently, the petitioners themselves in W.P. No.42637-42652/2017 had filed a writ petition seeking regularisation and the learned Single Judge disposed off the said writ petition on 21.06.2018 with a direction to the Commissioner of the Municipal Corporation, Mangalore, to furnish necessary details of the petitioners to the Deputy Commissioner to take a decision.

12. Pursuant to Court directions, a sub-committee was formed to look into the question of abolition of contract work in the City Corporation of Mangalore and other Corporations relating to the distribution of water supply.

13. As per the report titled 'Report on Abolition of Contract Labour in Water Supply Works of Mangalore, Gulbarga, Mysore, Hubli - Dharwad and Belgaum Corporations' dated 18.11.2003, recommendation was made for abolition of contract labour.



14. The observation as regards Mangalore City Corporation which would be of immediate relevance is as follows:

"2. MANGALORE CITY CORPORATION

In the case of Mangalore, Mr. J. T. Jinkalappa, Deputy Labour Commissioner, Hassan, has already prepared a well studied report which is enclosed herewith (Document 12 & 13). There are 176 contract workers in Mangalore. The Municipal Corporation has not registered their establishment under the Contract Labour (Regulation and Abolition) Act, 1970. It is found that the 6 contractors at Mangalore have filed an application before the Assistant Labour Commissioner, Mangalore, for obtaining the license under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970. Hence, there are no licenses held by the contractors. Therefore, the contract workers are to be treated as workers of the Municipal Corporation itself. The dispute regarding the regularisation of these workmen are pending before the Hon'ble High Court of Karnataka in Writ Petitions 4349 & 4461 to 4486/1997.

....The committee found that the water supply by the Municipal Corporation is of perennial nature and it is sufficient to employ sufficient number of permanent workers in water supply directly. The system of contract is sham to cover up the problem arising out of the Government's general policy of stoppage or recruitment. In view of the mandatory provision of Section 87 [j] in the Municipal Corporation Act, it is their business to provide water supply to the citizens and there is no justification for employing contract workers other than to meet the arbitrary direction by stoppage of recruitment.



Further, it is noteworthy that the distribution of water supply is the core activity of the Municipal Corporation and not a peripheral activity, which can be contractualised."

15. Subsequently, there was a report on contract labour system in Water Supply Department of Mangalore City Corporation, Mangalore, submitted by the Deputy Labour Commissioner, Hassan Region, enclosed along with a memo dated 18.12.2024 filed before the Court. The observations and the conclusion of the said report recommending for abolition of contract labour system are at page Nos. 52 to 54.

The findings in the report under the caption 'observations' which are of immediate relevance are as follows:

"1. The process and the operations in water supply department are permanent in nature except the construction of new tanks, laying of new pipelines and drilling of new borewells.



2. *The water supply, management and maintenance of water works is of permanent and perennial in nature.*

3. *The water supply, management and maintenance of water works entrusted to the contract workmen are of perennial and permanent nature of work.*

4. *Regular workmen / employees and contract workmen are performing same and similar kind of work.*

5. *The work being done by the contract workmen are of whole time throughout the year.*

6. *The supply of water, management and maintenance of water works requires all time supervision and definite employment of manpower is very essential throughout the day and 365 days a year."*

The findings in the report under the caption 'conclusion' reads as follows:

"In view of the above, Employment of Contract workmen in water supply department of Mangalore City Corporation, Mangalore, attracts Section 10 of the Contract Labour Regulation and Abolition Act, 1970. The employment of contract workmen in water supply department of the above said Corporation is contrary to the Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, and it requires abolition of Contract Labour system in the above department."

16. The list of workmen at Annexure-A to the said report consisted of 150 workmen excluding the petitioners.



17. Upon a representation of the petitioners that their names were left out in "Report on Abolition of Contract Labour in Water Supply Works of Mangalore, Gulbarga, Mysore, Hubli - Dharwad and Belgaum Corporations", a fresh report was prepared by the Deputy Labour Commissioner, Hassan Region, Hassan, which reads as "Additional Report on Contract Labour System in Water Supply Department of Mangalore City Corporation, Mangalore", which includes the names of the petitioners. The said report is produced at Document No.13 of the memo dated 18.12.2024.

18. On 02.11.2006 order was passed by the Government under Section 10 of the Act abolishing practice of engagement of contract labour in the Mangalore Mahanagara Palike as regards employees in the Water Supply Department on the basis of the reports submitted and recommendations made thereon.



19. While the factual narrations which are not in dispute are that the practice of abolition of contract labour was taken note of and order passed on 02.11.2006, it is not in dispute that even subsequent thereto till date petitioners have continued to render service to the Mangalore Mahanagara Palike through a contractor.

20. It is to be noticed that by virtue of the additional report on contract labour, the petitioners' names in effect have been included in the list of employees whose engagement through the contractor was found to be in contravention to the provision of the Act. It could be concluded that the petitioners could also be treated to be the employees whose employment through a contractor stood abolished by order dated 02.11.2006.

21. Subsequent to the year 2006, the petitioners are stated to have rendered service through an outsource agency to the Mangalore Mahanagara Palike



as admitted by the said authority in its statement of objections filed before this Court dated 19.08.2024.

22. The petitioners now having approached this Court for the relief extracted supra are seeking for regularization of their services by reliance on the judgment of the Apex Court in ***Umadevi (supra)***.

23. It is to be noticed that the petitioners having rendered service to a statutory authority through a contractor which is referred to as an out-source agency till date, are seeking for appropriate relief on the basis of ***Umadevi (supra)*** which law is applicable to employees working under "State Agency".

24. In the event the petitioners' services were discharged by virtue of the order passed under Section 10 of the Act and had ceased to work, perhaps the right to regularization would be a difficult right to assert.



25. In the present case, the petitioners have continued to render service to the Mangalore Mahanagara Palike through an out-source agency which is clear on a reading of statement of objections of the respondent No.2 - Authority (see Para No.7).

26. The petitioners request for regularization is made on the basis of the continued rendering of services to the Municipal Authority despite order of abolition of contract labour on 02.11.2006.

27. The Judgment of the Apex Court in ***Steel Authority of India Ltd., and others v. National Union Waterfront Workers and others²[SAIL]***, would indicate that mere order passed under section 10 of the Act could not have the effect of treating such employees whose engagement by the contractor was found to be offending the Act, as employees whose services rendered previously could not be taken note of. The abolition of contract labour puts an end to

² (2001) 7 SCC 1



exploitation by the principal employer. Where the employer is State itself, if the service rendered till such date and subsequently, maybe taken note of to establish a link between the principal employer and the employee in the particular factual matrix as in the present case, appropriate relief may be moulded.

28. It must be noticed that –

(i) the services rendered by the petitioners through a contractor were relating to the water supply department. The report of abolition of contract labour which was acted upon by the Government categorically states the stand of the Municipal Authority that the contract workmen were working against permanent vacancies.

(ii) The report further observes the stand of Municipal Authority that in light of ban on recruitment by government, in order to ensure continued supply of water, the services of contract



workmen was being obtained by engagement of a contractor.

(iii) It is also the stand of the Municipal Authority as recorded in the report that engagement of such manpower was essential and without such manpower, the water supply operations could not be conducted.

(iv) The report categorically observes that "the principal employer has not obtained certificate of registration under section 7 of the Contract Labour (Regulation and Abolition) Act".

(v) The report further indicated that the principal employer and the contractor have not maintained any of the registers and records as required under the provisions of the Act.

(vi) The report observes that there are vouchers evidencing payments once a month through Junior Engineers of the Corporation.



(vii) It is specifically observed that the work carried out by contract workmen are of permanent and perennial in nature and that the work entrusted to the contractor was an "essential service" in terms of category in schedule II of the Act.

29. It is in the context of such finding, in the report that order came to be passed by the Government under section 10 of the Act.

30. The continuance of rendering of service by the petitioner is through an out-source agency subsequent to the order passed under Section 10 of the Act.

31. The representation of the petitioner for regularization as been forwarded by the Municipal Authority to the Deputy Commissioner who was authorized to take a decision regarding regularization



through a communication dated 05.12.2019 at Annexure-W.

32. The recommendation to the Deputy Commissioner by the Mangalore Mahanagara Palike dated 05.12.2019, is extracted below:-

"ಆದರೆ ಶ್ರೀ ಭಗವಾನ್‌ದಾಸ್ ಮತ್ತು ಇತರ ಒಟ್ಟು 16 ಮಂದಿ ನೌಕರರ ದಿನಗೂಲಿಯಲ್ಲಿ ಸೇವೆಸಲ್ಲಿಸುತ್ತಿದ್ದ ಬಗ್ಗೆ ಸಂಬಂಧಿಸಿದ ನೀರು ಸರಬರಾಜು ವಿಭಾಗದ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ಉಲ್ಲೇಖ(8) ರಂತೆ ನೀಡಿದ ವರದಿಯಲ್ಲಿ ಮಂಗಳೂರು ಮಹಾನಗರಪಾಲಿಕೆಯಲ್ಲಿ ನೀರು ಸರಬರಾಜು ನಿರ್ವಹಣೆಯನ್ನು ಹೊರಗುತ್ತಿಗೆಯಲ್ಲಿ ನಿರ್ವಹಿಸುತ್ತಿದ್ದು ನೀರು ಸರಬರಾಜು ನಿರ್ವಹಣೆಗೆ ಯಾವುದೇ ದಿನಗೂಲಿ ನೌಕರರನ್ನು ನೇಮಿಸಲಾಗಿರುವುದಿಲ್ಲವೆಂದು ತಿಳಿಸಿರುವರು

ಶ್ರೀ ಭಗವಾನ್ ದಾಸ್ ಮತ್ತು ಇತರ ಒಟ್ಟು 16 ಮಂದಿ ಗೌರವಾನ್ವಿತ ಘನ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಸಿವಿಲ್ ಆಪೀಲು ಸಂಖ್ಯೆ:3595-3612/1999 ರ ದಿನಾಂಕ 16-04-2006 ರಂದು ನೀಡಿದ ತೀರ್ಪಿನ 4 ಷರತ್ತುಗಳಿಗೆ ಬದ್ಧರಾಗಿರುವುದಿಲ್ಲ. ವಿವರ ಈ ಕೆಳಗಿನಂತಿವೆ.

1	ದಿನಗೂಲಿ ಮೇಲೆ ನೇಮಕಾತಿ ಮಾಡಿದಾಗ ಸದರಿ ನೌಕರರಿಗೆ ಆ ಹುದ್ದೆಯ ನೇಮಕಾತಿಗೆ ಇರುವ ಸೂಕ್ತ ವಿದ್ಯಾರ್ಹತೆ ಇರಬೇಕು.	ನೀರು ಸರಬರಾಜಿಗೆ ಸಂಬಂಧಿಸಿದ 'ಡಿ' ಗುಂಪಿನ ಹುದ್ದೆಗಳಿಗೆ 1971 ರ ವೃಂದ ಮತ್ತು ನೇಮಕಾತಿ ನಿಯಮದಲ್ಲಿ ವಿದ್ಯಾರ್ಹತೆ ನಿಗದಿಪಡಿಸಿಲ್ಲ. ಅನುಭವ ಪರಿಗಣಿಸಲಾಗಿದೆ. ಆದುದರಿಂದ ಸದ್ರಿ
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		ಷರತ್ತು ಅನ್ವಯಿಸುವುದಿಲ್ಲ.
2	ಸದರಿ ಹುದ್ದೆಯು ಮಂಜೂರಾದ ಹುದ್ದೆ ಇರಬೇಕು ಹಾಗೂ ಖಾಲಿ ಹುದ್ದೆ ಇರಬೇಕು.	ಪಾಲಿಕೆಗಳ 1971 ರ ವೃಂದ ಮತ್ತು ನೇಮಕಾತಿ ನಿಯಮದಂತೆ ಮಂಜೂರಾದ ಒಟ್ಟು 30 ಪಂಪು ಅಪರೇಟರ್, ಪಂಪು ಕ್ಲೀನರ್ ಇತ್ಯಾದಿ ನೀರು ಸರಬರಾಜಿಗೆ ಸಂಬಂಧಿಸಿದ 'ಡಿ' ಗುಂಪಿನ ಹುದ್ದೆಗಳು ಮಂಜೂರಾಗಿರುವುದು.
3	ಸದರಿಯವರು ಸತತವಾಗಿ 10 ವರ್ಷಗಳ ಸೇವೆಯನ್ನು ಮಾಡಿರಬೇಕು.	ಸದ್ರಿ 16 ಮಂದಿ ನೌಕರರು ಪಾಲಿಕೆಯಲ್ಲಿ ದಿನಗೂಲಿಯಲ್ಲಿ ನೇಮಕಮಾಡಿಕೊಂಡಿಲ್ಲ. ಇವರುಗಳು ದಿನಗೂಲಿಯಲ್ಲಿ 10 ವರ್ಷಗಳ ಸೇವೆಯನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ.
4	ಯಾವುದೇ ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ಅಡಿಯಲ್ಲಿ 10 ವರ್ಷ ಸತತವಾಗಿ ಕೆಲಸ ಮಾಡಿರಬಾರದು.	ಸದ್ರಿ 16 ಮಂದಿ ನೌಕರರು ದಿನಗೂಲಿಯಲ್ಲಿ ಪಾಲಿಕೆಯಲ್ಲಿ 10 ವರ್ಷಗಳ ಸೇವೆಯನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ.

ಆದುದರಿಂದ ಶ್ರೀ ಭಗವಾನ್‌ದಾಸ್ ಮತ್ತು ಇತರ ಒಟ್ಟು 16 ಮಂದಿ ನೌಕರರು ಗೌರವಾನ್ವಿತ ಘನ ಸವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ರಿಟ್ ಆಪೀಲು ಸಂಖ್ಯೆ: 3595/3612/1999 ರಲ್ಲಿ ಉಮಾದೇವಿ ಮತ್ತು ಇತರರ ವಿರುದ್ಧ ದಿನಾಂಕ 16-04-2006 ರಂದು ನೀಡಿದ ತೀರ್ಪಿನ 4 ಷರತ್ತುಗಳನ್ನು ಪೂರೈಸಿಲ್ಲವಾದುದರಿಂದ ಅವರುಗಳ



ಸೇವೆಯನ್ನು ಸಕ್ರಮಾತಿ ಗೊಳಿಸಲು ಅಸಾಧ್ಯವೆಂಬುದನ್ನು ತಮ್ಮ ದಯಾಪರ ಅವಗಾಹನೆಗೆ ತರಲಾಗಿದೆ."

33. The formal endorsement of the Deputy Commissioner at Annexure-X dated 12.12.2019 reads as follows:

1	ದಿನಗೂಲಿ ಮೇಲೆ ನೇಮಕಾತಿ ಮಾಡಿದಾಗ ಸದರಿ ನೌಕರರಿಗೆ ಆ ಹುದ್ದೆಯ ನೇಮಕಾತಿಗೆ ಇರುವ ಸೂಕ್ತ ವಿದ್ಯಾರ್ಹತೆ ಇರಬೇಕು.	ನೀರು ಸರಬರಾಜಿಗೆ ಸಂಬಂಧಿಸಿದ 'ಡಿ' ಗುಂಪಿನ ಹುದ್ದೆಗಳಿಗೆ 1971 ರ ವೃಂದ ಮತ್ತು ನೇಮಕಾತಿ ನಿಯಮದಲ್ಲಿ ವಿದ್ಯಾರ್ಹತೆ ನಿಗದಿಪಡಿಸಿಲ್ಲ. ಅನುಭವ ಪರಿಗಣಿಸಲಾಗಿದೆ. ಆದುದರಿಂದ ಸದ್ರಿ ಷರತ್ತು ಅನ್ವಯಿಸುವುದಿಲ್ಲ.
2	ಸದರಿ ಹುದ್ದೆಯು ಮಂಜೂರಾದ ಹುದ್ದೆ ಇರಬೇಕು ಹಾಗೂ ಖಾಲಿ ಹುದ್ದೆ ಇರಬೇಕು.	ಪಾಲಿಕೆಗಳ 1971 ರ ವೃಂದ ಮತ್ತು ನೇಮಕಾತಿ ನಿಯಮದಂತೆ ಮಂಜೂರಾದ ಒಟ್ಟು 30 ಪಂಪು ಅಪರೇಟರ್, ಪಂಪು ಕ್ಲೀನರ್ ಇತ್ಯಾದಿ ನೀರು ಸರಬರಾಜಿಗೆ ಸಂಬಂಧಿಸಿದ 'ಡಿ' ಗುಂಪಿನ ಹುದ್ದೆಗಳು ಮಂಜೂರಾಗಿರುವುದು.
3	ಸದರಿಯವರು ಸತತವಾಗಿ 10 ವರ್ಷಗಳ ಸೇವೆಯನ್ನು ಮಾಡಿರಬೇಕು.	ಸದ್ರಿ 16 ಮಂದಿ ನೌಕರರು ಪಾಲಿಕೆಯಲ್ಲಿ ದಿನಗೂಲಿಯಲ್ಲಿ 10



		ವರ್ಷಗಳ ಸೇವೆಯನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ.
4	ಯಾವುದೇ ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ಅಡಿಯಲ್ಲಿ 10 ವರ್ಷ ಸತತವಾಗಿ ಕೆಲಸ ಮಾಡಿರಬಾರದು.	ಸದ್ರಿ 16 ಮಂದಿ ನೌಕರರು ದಿನಗೂಲಿಯಲ್ಲಿ ಪಾಲಿಕೆಯಲ್ಲಿ 10 ವರ್ಷಗಳ ಸೇವೆಯನ್ನು ಸಲ್ಲಿಸಿರುವುದಿಲ್ಲ.

ಆದುದರಿಂದ ಶ್ರೀ ಭಗವಾನ್‌ದಾಸ್ ಮತ್ತು ಇತರರು ಒಟ್ಟು 16 ಮಂದಿ ನೌಕರರು ಗೌರವಾನ್ವಿತ ಘನ ಸವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಅಪೀಲು ಸಂಖ್ಯೆ: 3595/3612/1999 ರಲ್ಲಿ ಉಮಾದೇವಿ ಮತ್ತು ಇತರರ ವಿರುದ್ಧ ದಿನಾಂಕ 16-04-2006 ರಂದು ನೀಡಿದ ತೀರ್ಪಿನ 4 ಷರತ್ತುಗಳನ್ನು ಪೂರೈಸಿಲ್ಲವಾದುದರಿಂದ ಅವರುಗಳ ಸೇವೆಯನ್ನು ಸಕ್ರಮಾತಿ ಗೊಳಿಸಲು ಸಾಧ್ಯವಿರುವುದಿಲ್ಲವೆಂದು ಲಿಖಿತ ವರದಿ ನೀಡಿರುತ್ತಾರೆ. ಅದರಂತೆ ಉಲ್ಲೇಖ (1)ರ ಪಾಲಿಕೆಯ ಆಯುಕ್ತರ ಹೇಳಿಕೆಯನ್ನು ಅನುಸರಿಸಿ, ಘನ ಸವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಉಮಾದೇವಿ ಪ್ರಕರಣದ ತೀರ್ಪಿನಲ್ಲಿ ವಿಧಿಸಿರುವ 4 ಷರತ್ತುಗಳನ್ನು ಶ್ರೀ ಭಗವಾನ್ ದಾಸ್ ಮತ್ತು ಇತರರು ಒಟ್ಟು 16 ಮಂದಿ ಪಂಪ್ ಅಪರೇಟರ್ ಮತ್ತು ವಾಲ್ವ್‌ಮನ್‌ಗಳು. ಮಂಗಳೂರು ಮಹಾನಗರಪಾಲಿಕೆ, ಇವರು ಪೂರೈಸದಿರುವುದರಿಂದ ಇವರ ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಲು ಸಾಧ್ಯವಿರುವುದಿಲ್ಲವೆಂದು ಆದೇಶಿಸಲಾಗಿದೆ."

34. No doubt, in terms of the judgment of the Apex Court in **SAIL (supra)**, the mere order of abolishing of Contract Labour would not entitle the workmen for regularization by deeming them to be workmen of the principal employer.



35. However, the findings in the report³ as recorded supra would indicate the following:

(i) That the work being rendered through a contractor to a Municipal Authority to help in its water supply work was perennial core activity of the Municipal Authority in terms of schedule II of the Municipal Authorities Act.

(ii) Arrangement of availing service to fulfill the service of water supply was arranged through a contractor as there was a ban on recruitment.

(iii) Admittedly, these contract workmen were working against sanctioned posts.

36. From the extract of Annexures - W and X above as regards the four requirements of the **Umadevi (supra)**, the finding regarding the qualification and work against sanctioned posts have already been held in

³REPORT ON ABOLITION ON CONTRACT LABOUR IN WATER SUPPLY WORKS OF MANGALORE, GULBARGA, MYSORE, HUBLI-DHARWAD AND BELGAUM CORPORATIONS DATED 18.11.2003.



the favour of the petitioner. As regards the point Nos. 3 and 4 extracted supra, there have been negative findings.

37. The question is as to whether the services rendered by the workmen through a contractor till 02.11.2006 and the subsequent services rendered to the Municipal Authority through an outsource agency could be taken note of for the purpose of considering regularization of the petitioners services under the principal employer.

38. This very aspect was considered by the Apex Court in ***Shripal & Anr v. Nagar Nigam, Ghaziabad***⁴ [**Shripal**] and ***Jaggo v. Union of India and Others***⁵ [**Jaggo**].

39. The Apex Court in no uncertain terms has recognized the system of contract labour/ out-sourcing as methods of avoiding direct recruitment. The relevant

⁴ CIVIL APPEAL NO.8157 OF 2024 dt. 31.01.2025

⁵ 2024 SCC OnLine SC 3826



observations of the Apex Court in **Jaggo (supra)** are as follows:

"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.

*24. The landmark judgment of the United States in the case of **Vizcaino v. Microsoft Corporation - 97F.3d1187 (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:

xxxx

• **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."

The Apex Court has also specifically observed that the Judgment in **Umadevi (supra)** cannot be invoked to defeat the legitimate claims of the employees. The observations at para 26 and 27 reads as follows:



"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."

40. The same position has been reiterated in **Shripal (supra)** at the following paras of the Judgment:

"11. Furthermore, the Employer's stance that there was never a direct employer-employee relationship is wholly unsubstantiated. If, in fact, the Appellant Workmen had been engaged solely through a contractor, the Employer would have necessarily maintained some form of contract documentation, license copies, or invoices substantiating the contractor's role in hiring, paying, and supervising these workers. However, no such documents have been placed on record. Additionally, the Employer has failed to establish that wages were ever paid by any entity other than its own Horticulture Department, which strongly indicates direct control and supervision over the Workmen's day-to-day tasks is a hallmark of an employer-employee relationship. Had there been a legitimate third-party contractor, one would expect to see details such as tender notices, contract agreements, attendance records maintained by the contractor, or testimony from the contractor's representatives. The absence of these crucial elements undermines the Employer's claim of outsourced engagement. In fact, it appears that the Workmen were reporting directly to the Horticulture Department officials, receiving instructions on their duties, and drawing wages issued under the Municipality's authority. This pattern



of direct oversight and wage disbursement substantially negates the narrative that they were "contractor's personnel." Consequently, the discontinuation of their services carried out without compliance with statutory obligations pertaining to notice, retrenchment compensation, or approval under Section 6E of the U.P. Industrial Disputes Act, stands on precarious ground. The very foundation of the Employer's defense (i.e., lack of an employer-employee relationship) is not supported by any credible or contemporaneous evidence.

12. The evidence, including documentary material and undisputed facts, reveals that the Appellant Workmen performed duties integral to the Respondent Employer's municipal functions specifically the upkeep of parks, horticultural tasks, and city beautification efforts. Such work is evidently perennial rather than sporadic or project-based. Reliance on a general "ban on fresh recruitment" cannot be used to deny labor protections to long-serving workmen. On the contrary, the acknowledged shortage of Gardeners in the Ghaziabad Nagar Nigam reinforces the notion that these positions are essential and ongoing, not intermittent.

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.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement..."

41. In light of the above, the communications at Annexures - W and X are partially set aside with further direction to the Deputy Commissioner, Mangalore, to pass an order of regularization forthwith in light of the discussions and observations made above.

42. It is clarified that the petitioners would be entitled only for continuity of service and period served would be counted for post retiral benefits. The order of regularization is to take effect from the dates on when



they have completed 10 years as listed in annexure to order of Deputy Commissioner at Annexure-K dated 28.07.2016 which is extracted below as a purpose of convenience and to avoid ambiguity.

ಕ್ರ.ಸಂ.	ನೌಕರರ ಹೆಸರು	ದಿನಗೂಲಿ ಆಧಾರದ ಮೇಲೆ ಸೇವೆಗೆ ಸೇರಿದ ಹುದ್ದೆ	ವಿದ್ಯಾರ್ಹತೆ	ಜನ್ಮ ದಿನಾಂಕ	ದಿನಗೂಲಿ ಆಧಾರದ ಮೇಲೆ ಸೇವೆಗೆ ಸೇರಿದ ದಿನಾಂಕ	10 ವರ್ಷ ಸೇವೆ ಪೂರೈಸಿದ ದಿನಾಂಕ	ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಿದ ದಿನಾಂಕ	ಸೇವೆಯನ್ನು ಸಕ್ರಮಗೊಳಿಸಿದ ಹುದ್ದೆ	ವೇತನ ಶ್ರೇಣಿ
1.	ಶ್ರೀ ಭಗವಾನ್ ದಾಸ್	ವಾಲ್ಡ್ ಮನ್	9ನೇ ತರಗತಿ	6-8-1968	1-1-1988	31-12-1998	01-01-1999	ವಾಲ್ಡ್ ಮನ್	9,600-14,550
2.	ಶ್ರೀ ರಮೇಶ್	ಪಂಪು ಆಪರೇಟರ್	7ನೇ ತರಗತಿ	1-4-1972	01-05-1990	30-04-2000	01-05-2000	ಪಂಪು ಆಪರೇಟರ್	9,600-14,550
3.	ಶ್ರೀ ಪ್ರವೀಣ್	ವಾಲ್ಡ್ ಮನ್		14-05-1963	1-1-1991	31-12-2001	01-01-2002	ವಾಲ್ಡ್ ಮನ್	9,600-14,550
4.	ಶ್ರೀ ವಾಮನ	ವಾಲ್ಡ್ ಮನ್	7ನೇ ತರಗತಿ	8-12-1965	2-2-1991	01-02-2001	02-02-2001	ವಾಲ್ಡ್ ಮನ್	9,600-14,550
5.	ಶ್ರೀ ಮಂಜುನಾಥ	ಪಂಪು ಆಪರೇಟರ್	7ನೇ ತರಗತಿ	20-7-1972	8-2-1991	07-02-2001	08-02-2001	ಪಂಪು ಆಪರೇಟರ್	9,600-14,550
6.	ಶ್ರೀ ಹರಿಯಪ್ಪ	ವಾಲ್ಡ್ ಮನ್	7ನೇ ತರಗತಿ	13-6-1959	6-8-1991	05-08-2001	06-08-2001	ವಾಲ್ಡ್ ಮನ್	9,600-14,550



7.	ಶ್ರೀ ಕೆ. ಸುಧೀರ್	ವಾಲ್ಡ್ ಮೆನ್	10ನೇ ತರಗತಿ	24-12-1971	1-9-1991	31-08-2001	01-09-2001	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
8.	ಶ್ರೀ ಬಾಬು ಬಂಗೇರ (ಬಾಬು)	ವಾಲ್ಡ್ ಮೆನ್	5ನೇ ತರಗತಿ	1-6-1955	25-5-1992	24-05-2002	25-05-2002	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
9.	ಶ್ರೀ ಶಾಜಿಲ್ ಕುಮಾರ್	ವಾಲ್ಡ್ ಮೆನ್	9ನೇ ತರಗತಿ	11-1-1972	25-5-1992	24-05-2002	25-05-2002	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
10.	ಶ್ರೀ ಜಗದೀಶ್ ಕೆ.	ವಾಲ್ಡ್ ಮೆನ್	9ನೇ ತರಗತಿ	5-1-1970	1-1-1993	31-12-2003	01-01-2004	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
11.	ಶ್ರೀ ಜೆ. ಮೋಹನ್ ದಾಸ್	ವಾಲ್ಡ್ ಮೆನ್	8ನೇ ತರಗತಿ	13-5-1965	1-1-1994	31-12-2004	01-01-2005	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
12.	ಶ್ರೀ ಕೆ. ಗೋವಿಂದ	ವಾಲ್ಡ್ ಮೆನ್	5ನೇ ತರಗತಿ	4-6-1955	1-1-1994	31-12-2004	01-01-2005	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
13.	ಶ್ರೀ ಪುರುಷೋತ್ತಮ	ವಾಲ್ಡ್ ಮೆನ್	6ನೇ ತರಗತಿ	16-3-1957	1-2-1994	31-01-2004	01-02-2004	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
14.	ಶ್ರೀ ಕೆ.ಎನ್. ಪ್ರವೀಣ್	ವಾಲ್ಡ್ ಮೆನ್	10ನೇ ತರಗತಿ	19-5-1976	20-05-1994	19-05-2004	20-05-2004	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
15.	ಶ್ರೀ ಸಂತೋಷ್	ವಾಲ್ಡ್ ಮೆನ್	6ನೇ ತರಗತಿ	20-5-1976	21-5-1994	20-05-2004	21-05-2004	ವಾಲ್ಡ್ ಮೆನ್	9,600- 14,550
16.	ಶ್ರೀ ಪ್ರವೀಣ್ ಶೆಟ್ಟಿ	ಪಂಪು ಆಪರೇಟರ್	8ನೇ ತರಗತಿ	8-12-1971	1-12-1994	30-11-2004	01-12-2004	ಪಂಪು ಆಪರೇಟರ್	9,600- 14,550



43. It is needles to state that the order of regularization is to be passed within 60 days from the date of receipt of copy of this order.

Accordingly, the writ petition is ***disposed off***.

**Sd/-
(S SUNIL DUTT YADAV)
JUDGE**

VP
List No.: 1 Sl No.: 96