

**2024 LiveLaw (SC) 330**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
VIKRAM NATH; J., K.V. VISWANATHAN; J.**

**JANUARY 30, 2024**

**CIVIL APPEAL NOS. OF 5153-54 OF 2024 (ARISING OUT OF SLP(C) Nos.22241-42 OF 2016)  
**VINOD KUMAR & ORS. ETC. *versus* UNION OF INDIA & ORS.****

**Service Law – Regularization of employment – Change in nature of employment through continuous service – Held, 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. Continuous service in capacities of regular employees, performing duties indistinguishable from those in permanent posts, and selection through a process that mirrors that of regular recruitment, constitutes a substantive departure from the temporary nature of the initial engagement. Reliance on procedural formalities cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Further, promotion was based on a specific notification for vacancies, followed by a selection process involving written tests and interviews. Hence, the service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The appellants are entitled to be considered for regularization in their respective posts. (Para 5 & 6)**

(Arising out of impugned final judgment and order dated 30-03-2016 in CMWP No. 42692/2001 and in CMWP No. 42688/2001 passed by the High Court of Judicature At Allahabad)

*For Petitioner(s) Mr. Ajayveer Singh, Adv. Ms. Divya Garg, Adv. Mr. Uday Ram Bokadia, Adv. Mr. Shubham Tomar, Adv. Ms. Deepika Jain, Adv. Mr. Atit Jain, Adv. Mr. Ajay Jain, Adv. Mr. Sonal Jain, AOR*

*For Respondent(s) Mr. K. Parameshwaran, Adv. Mrs. Sakshi Kakkar, Adv. Mr. Sandeep Kumar Mahapatra, Adv. Mrs. Swarupama Chaturvedi, Adv. Mr. Amrish Kumar, AOR*

**ORDER**

**VIKRAM NATH, J.**

Leave granted.

**2.** These appeals arise out of the judgment dated 30.03.2016, passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 42688 of 2001 and Civil Misc. Writ Petition No. 42692 of 2001, whereby the writ petitions filed by the appellants challenging the judgment of the Central Administrative Tribunal, Allahabad Bench, dated 21.11.2001 were dismissed. The Tribunal's judgment negated the appellants' plea for regularization and absorption into the posts of 'Accounts Clerk' against which they were temporarily appointed. Despite being appointed for what was termed a temporary or scheme-based engagement, the appellants have been continuously working in these positions from 1992 till the present, spanning a period exceeding 25 years.

**3.** Pursuant to a notification dated 21.02.1991, the appellants were initially appointed to ex-cadre posts of Accounts Clerks after a selection process involving written tests and viva voce interviews. After the rejection of their representation for regularization to the Divisional Railway Manager in 1999, the appellants approached the Central Administrative Tribunal by way of Original Applications. The Tribunal vide order dated 21.11.2001 dismissed the applications of the appellants, concluding that their appointments were temporary and for a specific scheme, thus not entitling them to regularization or absorption into permanent posts. Thereafter, the appellants approached the High Court and the High

Court upheld the order of the Tribunal and dismissed their Writ Petitions observing that the appellants' employment under a temporary scheme could not confer upon them the rights akin to those held by permanent employees and relied upon the judgement of this Court in **Secretary, State of Karnataka vs. Umadevi reported in 2006 (4) SCC 1**, which held that temporary or casual employees do not have a fundamental right to be absorbed into service.

4. The appellants have approached this Court arguing that the High Court erred in its judgment by failing to recognize the substantive nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed for. Furthermore, their promotion by a regularly constituted Departmental Promotional Committee, the selection process they underwent, and the continuous nature of their service for over a quarter of a century underscored their argument for regularization and that the High Court has incorrectly applied the principles from the case of **Uma Devi (supra)** to their situation.

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 **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 judgement 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. Paragraph 53 of the **Uma Devi (supra)** case is reproduced hereunder:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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 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 recognize 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.

**9.** Accordingly, the appeals are allowed. The judgment of the High Court is set aside, and the appellants are entitled to be considered for regularization in their respective posts. The respondents are directed to complete the process of regularization within 3 months from the date of service of this judgment.

**10.** No order as to costs.

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