

IN THE HIGH COURT OF JHARKHAND AT RANCHI

**L.P.A. No. 435 of 2024**

Rajesh Kumar Verma, aged about 40 years, son of Ganesh Prasad Mahto, Resident of Shanti Sadan, Kushwaha Chowk, Leda, Village-Leda, P.O Leda, P.S. Giridih, District-Giridih, Jharkhand.

.... **Petitioner/Appellant**

**Versus**

1. The State of Jharkhand through Secretary, Department of Women, Child Development and Social Security, having its office at Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District-Ranchi, Jharkhand.
2. Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, having its office at Project Building, Dhurwa, Ranchi, P.O. Dhurwa, P.S. Jagannathpur, District-Ranchi, Jharkhand.
3. Deputy Commissioner, having his office at Giridih, P.O. Giridih, P.S. Giridih, District-Giridih, Jharkhand.

.... **Respondents/Respondents**

**CORAM: HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Appellant :Mr. Indrajit Sinha, Advocate  
Mr. Ankit Vishal, Advocate  
For the Respondents: :Mr. Aditya Kumar, A.C. to Sr. S.C. 1

Reserved on: 23.10.2024

**Pronounced on: 19.11.2024**

**Per M.S. Ramachandra Rao, C.J.**

1. This Letters Patent Appeal is preferred by the appellant challenging the judgement dated 23.4.2024 of the learned Single Judge in W.P.(S) No. 2083 of 2023.
2. The appellant had filed the said writ petition seeking regularization of his services on the pretext that he had been continuously working against the post of Computer Operator for more than ten years and to absorb him on the sanctioned post of Accounts Clerk as he possesses all

the requisite qualifications for the said post. He also sought a direction to the respondents to consider the period from the date of initial appointment for computation of all benefits including the retiral benefits. Alternatively, he sought a direction to the respondents to make payment of remuneration/ benefits to him at par with the remuneration/benefits being granted to the regular employees working on the post of Accounts Clerk.

3. Admittedly, the appellant was appointed on 25.01.2008 as Computer Operator in Social Security Cell, Giridih through a letter no. 33 dated 25.01.2008 from 01.01.2008 to 31.03.2008 on payment of daily wages of Rs.183/- and his services were extended from time to time.
4. On 19.01.2013, an advertisement was issued for filling up the post of Computer Operator cum Clerk on contractual basis under the Jharkhand Building and other Construction Workers Welfare Board functioning under the Chairmanship of the Deputy Commissioner, Giridih.
5. The prescribed qualification for the post was MCA/BCA/B.Sc.(IT)/B.E. or equivalent or graduate with one year Diploma in Computer application from a recognized Institute/University, Hindi typing 30 words per minute, English typing 30 words per minute and minimum one year relevant work experience post qualification
6. The appellant applied for it and as he possessed the requisite qualification, he was selected on 31.01.2013 by a Committee headed by

the Deputy Commissioner and two other Members, who were Labour Superintendent, Giridih and the DIO, Giridih.

7. Though appointment of the appellant as Computer Operator cum Clerk was for one year only on contractual basis with a condition for its extension if required, and if his services are found to be satisfactory, admittedly he has been working continuously since then.
8. The remuneration of the appellant was also later increased to Rs.16,480/- vide a proceeding dated 17.11.2016 (Annexure-4).
9. According to the appellant, a notification was issued by the Department of Personnel, Administrative Reforms and Official Language on 20.06.2019 in compliance of the judgement of the Supreme Court in *Narendra Kumar Tiwari and others Vs. State of Jharkhand and others in Civil Appeals No. 7423-7429 of 2018*, and there was an amendment to the rules made for regularization of services i.e. Jharkhand Sarkar Ke Adhinasth Aniyamit Rup Se Niyukt Ewam Karyarat Karmiyo Ki Sewa Niyamitikaran Niyamawali, 2015 ( for short 'the Rules') to the extent that the cutoff date for calculation of continuous service for regularization was changed from 10.04.2006 to 20.06.2019.
10. In view of the same, the office of the Deputy Commissioner (District Social Security Treasury), Giridih issued a letter dated 17.08.2019 directing Joint Secretary, Government of Jharkhand to take immediate action on the regularization of those employees who have completed 10

years of continuous service till 20.06.2019 in the light of the 2015 rules and amendment thereof.

11. According to the appellant, an application for regularization was also received by him and was submitted by him. But no decision thereon was communicated to him.
12. Thereafter on 25.10.2019, an order was passed by the office of the Deputy Commissioner cum District Magistrate, Giridih extending the contractual service of the appellant from 01.04.2019 to 31.03.2020.
13. On 27.03.2021, the Assistant Director, Social Security, Giridih wrote the Under Secretary, Women Child Development and Social Security Department informing that a report in relation to the regularization and improvement of service condition of the personnel working on contract has been submitted and in that document the name of the appellant finds place.
14. Thereafter again the services of the appellant were extended from 01.04.2021 to 31.03.2022 by the Annexure-9 order dated 31.07.2021 passed by the office of the Deputy Commissioner cum District Magistrate, Giridih.
15. Even thereafter, through an order dt.8.7.2022 passed by the same office, his services were extended from 1.4.2022 to 31.03.2023.

**The case of the appellant**

16. The appellant relies on Annexure-11-Minutes of Meeting dated 22.7.2022 of Bhakti Sewa Regularization Committee held under the

Chairmanship of Principal Secretary, Finance Department, Jharkhand which considered service regularization of irregularly appointed personnel and contends that cases of personnel appointed on the post of Computer Operator/Data Entry Operator, where such post was not sanctioned and only the post of clerk was sanctioned, were considered for regularization; that computer related work was also being done in addition to the clerical work by such personnel; and therefore certain computer operators were regularized on the post of clerk, which is a sanctioned post. He alleges that the appellant was not considered by the respondents for conferring the said benefit though he possessed all the requisite qualifications and completed ten years of continuous service as on 20.06.2019.

17. The appellant contends that the same is arbitrary, whimsical and unreasonable and that he is also entitled for regularization and absorption on the sanctioned post of Accounts Clerk since he had completed ten years of continuous service as on 20.06.2019 as per the 2015 rules and so he is entitled for regularization.
18. According to the appellant, even as per the Minutes of the Meeting dated 27.6.2022 he is entitled to be regularized on the sanctioned post of Accounts Clerk even if the post of Computer Operator on which the appellant was initially appointed was not a sanctioned post, since other similarly situated persons had been absorbed and regularized.

**The stand of the respondents**

19. Counter affidavit was filed by the respondent no. 3 in the writ petition opposing grant of relief to the appellant.
20. The third respondent contended that from the letter dated 25.01.2008 (Annexure-1) the approval was for appointment of petitioner as Computer Operator in Social Security Cell, Giridih was only from 01.01.2008 to 31.03.2008 on daily wage basis at the rate of Rs.183.00 per day.
21. It is admitted that the appellant was selected for the post of Computer Operator cum Clerk for one year on 31.1.2013 vide Annexure-2 on contractual basis with condition that his services will be extended if required and if his service is found satisfactory.
22. It is also contended that since his initial appointment was on daily wage basis for 'data entry', and since there is no letter or guideline of Government regarding regularization of daily wage Computer Operator, the appellant is not entitled to get absorbed on sanctioned post of Accounts Clerk as was being sought.
23. It is alleged that Accounts Clerk are selected on the basis of merit through a common examination conducted by J.S.S.C., J.P.S.C. etc. and so the appellant does not come under the purview of Annexure-5 notification dated 20.06.2019.

**Rejoinder**

24. Rejoinder was filed thereto by the appellant contending that he was appointed on 25.01.2008 on the post of Computer Operator in Social Security Cell, Giridih and his services were extended from time to time and the last extension granted was from 1.4.2022 to 31.03.2023 by the office of the Deputy Commissioner cum District Magistrate, Giridih.
25. The appellant also contended that he is performing the duties and day to day work of Accounts Clerk as evident from a letter-Annexure-C dated 25.01.2024 whereby he had prepared the demand requisition for payment of pension for the month of February, 2024 under the Centrally Sponsored Scheme.

**The judgement of the learned Single Judge**

26. The learned Single Judge noted that the appellant had been initially appointed on daily wage, but subsequently he was appointed on contractual basis pursuant to an advertisement and the contract of employment was being renewed from time to time.
27. She also noted that as per the scheme of regularization of the State Government contained in Circular dated 13.02.2015 and its modification through a circular dated 20.06.2019(Annexure-5), regularization was for the persons who were irregularly appointed and were continuously working for a minimum period of 10 years.

28. But the learned Single Judge held that the scheme for regularization was not applicable for contractual appointments as the contractual appointments are not 'irregular' appointments.
29. She also held that the appellant cannot claim that he had worked continuously from 25.1.2008 since his appointment on daily wages ended once he was taken into employment on contractual basis pursuant to advertisement.
30. The learned Single Judge placed reliance on the judgement of the Supreme Court in *Ganesh Digamber Jambhrunkar & Others Vs. The State of Maharashtra & Ors.*<sup>1</sup> wherein the Supreme Court had held that working for a long period on contractual basis does not create a vested right of regularization.
31. She held that the claim for regularization of the appellant was not covered by the scheme for regularization as framed by the State and so, there is no merit in the writ petition.

**The instant LPA**

32. Challenging the same, this appeal is filed.
33. Counsel for the appellant contended that the judgement relied upon by the learned Single Judge would not apply to the instant case because the appellant had the requisite qualifications and was selected through a selection process pursuant to the advertisement dt. 19.01.2013; and that the learned Single Judge had failed to consider the fact that services of

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<sup>1</sup> 2023 Live Law (SC) 801



similarly situated persons like the appellant had been regularized and the appellant had been discriminated against.

34. Counsel for the State supported the order passed by the learned Single Judge.

**Consideration by the Court**

35. We have noted the contentions of the parties and have perused the record and the order passed by the learned Single Judge.
36. From the facts of the case, there is no dispute that the appellant had been appointed initially vide Annexure-1 on daily wage basis as Computer Operator in the Social Security Cell, Giridih for the period from 01.01.2008 to 31.03.2008 and his services were continued from time to time.
37. Thereafter, a selection was conducted by the respondents for the post of Computer Operator cum Clerk on contract basis wherein qualifications were prescribed. An interview was held by the Deputy Commissioner and two other Govt. employees of Labour Department on 31.01.2013 in which the appellant got selected for contractual appointment under the Jharkhand Building and Other Construction Workers Welfare Board functioning under the Chairmanship of the Deputy Commissioner, Giridih as he was found to have fulfilled the qualifications prescribed in the advertisement.

38. Since then his appointment was being continued and the last of the extensions granted to the appellant was upto 31.3.2023 and even thereafter he is continuing.
39. Thus at least from 2008, the respondents were utilizing the appellant's services as a Computer Operator cum Clerk irrespective of the nomenclature given – daily wages or contractual.
40. A Constitution Bench in the case of *Secretary, State of Karnataka and others Vs. Uma Devi(3) and others*<sup>2</sup> held that a regular process of recruitment or appointment has to be resorted to by the State , when regular vacancies in posts, at a particular point of time, are to be filled up; and the filling up of regular vacancies cannot be done in a haphazard manner or based on patronage or other considerations. The Supreme Court criticized the Union Government, the State Governments, their departments and instrumentalities for resorting to irregular appointments in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit such irregular appointees or those appointed on contract or on daily wages, to continue year after year.

While recognizing that there may be occasions when the sovereign State or its instrumentalities will have to employ persons in posts which are temporary or on daily wages as additional hands or

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<sup>2</sup> (2006) 4 SCC 1

taking them in without following the required procedure to discharge the duties in respect of the posts that are not needed permanently, the Supreme Court emphasized that such engagements cannot be used to defeat the very scheme of public employment.

The Supreme Court held that the High Courts acting under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

It also observed that while directing the appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the persons concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment and he accepts the employment with open eyes, though he is not in a position to bargain.

It however envisaged a regularization of services in the following passage as a one time measure:

*“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa<sup>11</sup>, R.N. Nanjundappa<sup>12</sup> and B.N. Nagarajan<sup>8</sup> 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." (emphasis supplied)*

41. It is shocking that even after the said decision in 2006 of the Constitution Bench in ***Uma Devi*** (3) (2 supra), mandating making of regular appointments, the appellant was appointed on daily wage on 25.01.2008 on a daily wage of Rs.183/- for the period 01.01.2008 to 31.03.2008 as a Computer Operator in the Social Security Cell, Giridih.
42. The appellant had contended that his services had been extended from time to time which fact is not disputed by the respondents.

43. Later on 31.1.2013 there was an advertisement issued for the post of Computer Operator cum Clerk prescribing certain qualifications and the appellant was interviewed by the Deputy Commissioner, Giridih and two others and since he fulfilled the qualifications prescribed he was selected on 31.01.2013. Thereafter also he was continued admittedly upto the date of filing of the writ petition on 20.04.2023 and even thereafter on contractual basis.
44. Thus, in violation of the constitutional mandate to make appointment on regular basis in spite of availability of work from January, 2008 till February, 2023 and even thereafter, the State of Jharkhand/respondents appointed the appellant on daily wage basis and later on contractual basis and are utilizing the services of the appellant. There is no valid explanation for the same.
45. It is also not in dispute that there were no interim orders obtained by the appellant from the High Court for continuing him in service in the period between January, 2008 till the filing of the writ petition in February, 2023.
46. In *Narendra Kumar Tiwari and others Vs. State of Jharkhand and others*<sup>3</sup> the Supreme Court considered similar conduct on the part of the State of Jharkhand of continuing with a regular appointment for almost a decade after the decision in *Uma Devi (3) (1 supra)* and held that the State believes that it was all right to continue with the irregular

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<sup>3</sup> (2018) 8 SCC 238

appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed.

It held that this is nothing but a form of exploitation of the employees by not giving them the benefits of regularization and that this is precisely what the judgment in *Uma Devi (3) (supra)* and the judgment in *State of Karnataka Vs. M.L. Kesari*<sup>4</sup> sought to avoid.

It held that if a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in *Uma Devi (3) (2 supra)*, is to be taken into consideration, then no irregularly appointed employee of the State of Jharkhand could ever be regularized since that State came into existence only on 15.11.2000 and the cutoff date was fixed as 10.04.2006.

In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

It also opined that it was not good governance on the part of the State of Jharkhand to short circuit the process of regular appointments and instead make appointments on an irregular basis.

It held that Regularization Rules must be given a pragmatic interpretation and if the appellants in that case have completed ten years of service on the date of promulgation of the Regularization

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<sup>4</sup> (2010) 9 SCC 247

Rules, they ought to be given the benefit of the service rendered by them, unless there is some valid objection to their regularization like misconduct etc.

The Court specifically directed the State of Jharkhand to henceforth consider making regular appointments only and dropping the idea of making irregular appointments so as to short circuit the process of regular appointments.

47. Admittedly, relying on above decision, Annexure-5 notification dt. 20.06.2019 was issued by the State deciding to regularize the services of persons irregularly appointed and who had completed ten years of service and the benefit had been given by the State on 22.07.2022 to certain Computer Operators.
48. Reading of the Annexure-11 dated 22.07.2022 shows that out of nine people whose services were regularized, one had been appointed regularly as Computer Operator cum Data Entry Operator and the other eight had been appointed without any designation but were made to do computer related works including typing as at the time of their appointment there was no post of Data Entry Operator or Computer Operator and there was only a post of typist. In spite of the same, the services of the said persons were regularized by the State on the post of Clerk, which was a sanctioned post. There is no explanation for this action by the respondents. The appellant cannot be discriminated against in this manner by them.

49. The learned Single Judge, in our opinion, erred in holding that the scheme of regularization framed by the State in 2015 through a Circular dated 13.02.2015 as modified on 20.06.2019 would not apply in the case of persons like the appellant because they have been appointed on contractual basis, which are not irregular appointments.

This is because even the contractual appointment had not been contemplated in the Service Rules and only regular appointment ought to have been made as was held in the case of *Uma Devi (3)* (2 supra).

50. Further the view express by the learned Single Judge that the appellant had not worked continuously from 25.01.2008 because his appointment on that date on daily wages ended once he was taken into employment on contractual basis pursuant to advertisement also is erroneous because the respondents had utilized the services of the appellant continuously from 25.1.2008 till date without any break giving different descriptions of his job – daily wages for some time and later as contractual appointment.

51. The learned Single Judge ought to have taken note of the observations of the Supreme Court in *Narendra Kumar Tiwari (3 supra)* which specifically dealt with the cases of regularization of daily wage or *contract workers* on different posts in the State of Jharkhand and the observations it had made that continuing with such irregular appointments for more than a decade after the decision in *Uma Devi (3)*



(2 *supra*) is a form of exploitation of the employees by the State and cannot be countenanced.

52. The stand of the respondents that there are no sanctioned posts of computer operators also cannot be countenanced for such posts do not fall from heaven. It is the duty of the State to create such posts if they are needed. In *Nihal Singh v. State of Punjab*<sup>5</sup>, a similar plea was rejected. The Court held:

*“18. Coming to the judgment of the Division Bench of the High Court of Punjab & Haryana in LPA No. 209 of 1992 where the claims for regularisation of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularisation of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under Section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilise the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.*

*19. No doubt that the powers under Section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.*

*20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of a large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The State has to create*

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<sup>5</sup> (2013) 14 SCC 65

*them by a conscious choice on the basis of some rational assessment of the need.”(emphasis supplied)*

53. Recently, the Supreme Court considered the issue in the case of ***Vinod Kumar and Others Vs. Union of India and Others***<sup>6</sup>.

It was a case where the appellant’s plea for regularization and absorption into the posts of ‘Accounts Clerk’ against which they were temporarily appointed had been rejected by the Central Administrative Tribunal, Allahabad Bench as their appointments were termed temporary or scheme- based engagement, though they were continuously working in the said position from 1992 till 2024 for a period exceeding 25 years.

The Central Administrative Tribunal as well as the High Court did not grant relief to the appellants therein by taking a view that their appointment was under a temporary scheme and that in the case of ***Uma Devi (3) (2 supra)***, it has been held that temporary or casual employees do not have a fundamental right to be absorbed into service.

The Supreme Court held that 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 employees in the capacities of regular employees performing duties indistinguishable from those in

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<sup>6</sup> 2024 SCC Online SC 1533

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.

It was noticed that in that case promotion process was conducted and overseen by a Departmental Promotional Committee and they had rendered 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 and these factors merit a reconsideration of their employment status.

The Supreme Court held that the application of the judgement in **Uma Devi** (2 supra) by the High Court does not fit squarely within the fact in the case of *Vinod Kumar* (5 supra), given the specific circumstances under which the appellants therein were employed and had continued their service.

It declared that a 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.

It held that there was a failure on the part of the Administrative Tribunal and the High Court to recognize the substantive nature of the roles of the appellants and their continuous service akin to permanent employees; and it would be contrary to the principles of equality, fairness and the intent behind employment regulations, to deny them relief. It, therefore, directed consideration of their cases for

regularization in their respective posts and to complete the process within three months.

54. Having regard to the judgements in *Narendra Kumar Tiwari* ( 3 *supra*) and in *Vinod Kumar and others* (6 *supra*), we are of the opinion that the utilizing the services of the appellant from 2008 (though under nomenclature of a ‘daily wage’ employee initially and later from 2013 as a ‘contractual appointee’, which appointment was infact done through a selection process adopted by the State with the Deputy Commissioner as the head of the Interview Committee), is practically indistinguishable from an appointment in a permanent post of clerk who is also engaged in doing typing on computer and data entry.
55. The principles in *Uma Devi* (3) (2 *supra*) would not be attracted and procedural formalities like nomenclature cannot be used to perpetually deny appellant’s substantive right acquired through continuous service over a considerable period of time. The learned single Judge ought to have also taken note of the regularization of similarly situated persons like the petitioner in Annexure -11 which shows that the respondents had discriminated against the appellant.
56. Therefore, the appeal is partly **allowed**; the judgement of the learned Single Judge is set aside; and the respondents are directed to regularize the services of the appellant as a Clerk at par with the persons regularized on 22.07.2022 vide Annexure-11 within three months from the date of receipt of a copy of this order as he has undoubtedly

completed 10 years of service as on 20.6.2019 as per the Rules referred to in para 9 supra.

57. The relief sought for by the appellant to consider the period from the date of his initial appointment for computation of all benefits including retiral benefits is however declined since only after regularization of his service by the respondents, can it be counted for such benefits.
58. We also hold that the appellant is entitled to remuneration/benefits at par with that given to regular employees working on the post of Accounts Clerk for a period of three years prior to the filing of the writ petition.
59. Appeal is partly allowed accordingly.

**(M.S. Ramachandra Rao, C.J.)**

**(Deepak Roshan, J.)**

F.R

Rakesh/-