

Jaggo Vs. Union of India & Ors.

Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 5580 of 2024 · Supreme Court of India · 2024-12-20 · Vikram Nath · Prasanna B. Varale · F2J-C-1519

Full judgment text

Jaggo Vs. Union of India & Ors.

[Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 5580 of 2024]

Anita & Ors. Vs. Union of India & Ors.

[Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 11086 of 2024]

Vikram Nath, J.

1. Leave granted.

2. These appeals arise out of the judgment dated 08.08.2023 passed by the High Court of Delhi at New Delhi in W.P.(C) No. 6822 of 2018, whereby the High Court dismissed the writ petition filed by the appellants and confirmed the order of the Central Administrative Tribunal, Principal Bench Delhi dated 17.04.2018 whereby it dismissed the original application of the appellants seeking regularization of their services.

3. The appellants before this Court, who were applicants before the Tribunal originally numbered five. However, the fourth applicant before the Tribunal has not approached this Court. Therefore, these appeals are instituted by Applicant Nos.1, 2, 3, and 5 only. The sole Appellant in SLP(C) No. 5580/2024 was applicant no. 2 before the Tribunal whereas the Appellant no. 1, 2 and 3 in SLP(C) No. 11086/2024 were Applicant Nos. 1, 3 and 5 respectively before the Tribunal. For ease of reference and to maintain consistency, they shall continue to be referred to by their original applicant numbers as before the Tribunal.

4. The appellants before this Court, being Applicant Nos.1, 2, 3, and 5 before the Tribunal, were originally engaged by the Central Water Commission² on part-time, ad-hoc terms. Applicant No.1 was appointed as a Safaiwali in 1993, Applicant No.2 as a Safaiwali in 1998, and Applicant No.3 as a Safaiwali in 1999.

All three were primarily responsible for cleaning and maintaining the office premises under the CWC. Applicant No.5, appointed in 2004 as a Khallasi (also discharging duties akin to a Mali/Khallasi), was entrusted with tasks such as gardening, dusting, and other ancillary maintenance work. Throughout their engagement, these individuals performed essential housekeeping and support functions at CWC establishments, including its offices at Faridabad, ensuring daily upkeep and contributing to the smooth functioning of the Commission's administrative operations.

5. Initially, the appellants sought regularization of their services by filing Original Application No.2211/2015 before the Tribunal. They contended that over the years, their roles and responsibilities had evolved beyond the nominal labels of "part-time" or "contractual" and that they were performing ongoing and core functions integral to the CWC's operations. They relied on applicable government instructions and the principle that long-serving employees, engaged against work of a perennial nature, deserve fair consideration for regularization, provided their appointments were not illegal or clandestine.

The Tribunal, by its order dated 17.04.2018, dismissed the appellants' plea. It concluded that the appellants were not engaged on what it considered "regular vacancies," that they had not completed what it termed as sufficient "full-time" service (such as meeting a 240-days per year criterion), and that their case did not attract the principles enabling regularization. Within ten days after the dismissal of the original application, on 17.04.2018, the services of all these individuals were abruptly terminated on 27.10.2018 by the respondent authorities without issuance of any show-cause notice.

6. Aggrieved by the Tribunal's decision and subsequent termination, the appellants approached the High Court in W.P.(C) No. 6822 of 2018 praying for the following reliefs:

"a) Setting aside and quashing the impugned order dated 17.04.2018 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2211/2015 titled as Smt. Anita & Ors. Versus Union of India & Ors., and

b) Directing the respondents to reinstate the petitioners to their posts held by them prior to their illegal termination on 27.04.2018 and further to regularize the services of all the petitioners in their respective posts, from the date of their initial appointments with all the consequential benefits, in the interest of justice.

c) Issue the writ of mandamus or any other appropriate writ, direction, or order, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favor of the petitioners and against the respondents."

7. They urged the High Court to recognize their long and continuous service, the nature of their work, and the lack of any backdoor or illegal entry. They highlighted that they had functioned without any break, performed tasks equivalent to regular employees, and had been assigned duties essential to the regular upkeep, cleanliness, and maintenance of the respondent's offices.

The High Court, after examining the Tribunal's decision and the submissions advanced, concluded that the petitioners before it were part-time workers who had not been appointed against sanctioned posts, nor had they performed a sufficient duration of full-time service to satisfy the criteria for regularization. It relied on the principle laid down in *Secretary, State of Karnataka vs. Uma Devi*³ holding that the petitioners could not claim a vested right to be absorbed or regularized without fulfilling the requisite conditions.

The High Court further observed that the petitioners did not possess the minimum educational qualifications ordinarily required for regular appointments, and additionally noted that the employer had subsequently outsourced the relevant housekeeping and maintenance activities. Concluding that there was no legal basis to grant the reliefs sought, the High Court dismissed the writ petition. Aggrieved by this rejection, the appellants have approached this Court by way of these appeals.

8. On behalf of the appellants, the following arguments have been advanced before us:

(i). Continuous and Substantive Engagement: The appellants emphasize their long, uninterrupted service spanning well over a decade-and in some instances, exceeding two decades. They argue that their duties were neither sporadic nor project-based but permanent and integral to the daily functioning of the respondent's offices.

(ii). Nature of Duties: Their responsibilities- such as cleaning, dusting, gardening, and other maintenance tasks-were not casual or peripheral. Instead, they were central to ensuring a clean, orderly, and functional work environment, effectively aligning with roles typically associated with regular posts.

(iii). Absence of Performance Issues: Throughout their tenure, the appellants were never issued any warning or adverse remarks. They highlight that their work was consistently satisfactory, and there was no indication from the respondents that their performance was not satisfactory or required improvement.

(iv). Compliance with 'Uma Devi' Guidelines: The appellants assert that their appointments were not "illegal" but at most "irregular." Drawing on the principles laid down in *Secretary, State of Karnataka vs. Uma Devi*⁴, they submit that long-serving employees in irregular appointments-who fulfil essential, sanctioned functions-are entitled to consideration for regularization.

(v). Discrimination in Regularization: The appellants point out that individuals with fewer years of service or similar engagements have been regularized. They contend that denying them the same benefit, despite their longer service and crucial role, constitutes arbitrary and discriminatory treatment.

(vi). Irrelevance of Educational Qualifications: The appellants reject the respondents' reliance on formal educational requirements, noting that such criteria were never enforced earlier and that the nature of their work does not inherently demand formal schooling. They argue that retrospectively imposing such qualifications is unjustified given their proven capability over many years.

(vii). Equity and Fairness: Ultimately, the appellants submit that the High Court erred by focusing too rigidly on their initial terms of engagement and ignoring the substantive reality of their long, integral

service. They maintain that fairness, equity, and established judicial principles call for their regularization rather than abrupt termination

9. On the other hand, the following primary arguments have been advanced before us on behalf of the Respondents:

(i). Nature of Engagement: The respondents maintain that the appellants were engaged purely on a part-time, contractual basis, limited to a few hours a day, and that their work was never intended to be permanent or full-time.

(ii). Absence of Sanctioned Posts: They assert that the appellants were not appointed against any sanctioned posts. According to the respondents, without sanctioned vacancies, there can be no question of regularization or absorption into the permanent workforce.

(iii). Non-Compliance with 'Uma Devi' Criteria: Relying heavily on *Secretary, State of Karnataka vs. Uma Devi* (supra), the respondents argue that the appellants do not meet the conditions necessary for regularization. They emphasize that merely serving a long period on a part-time or ad-hoc basis does not create a right to be regularized.

(iv). Educational Qualifications: The respondents contend that even if the appellants were to be considered for regular appointments, they do not possess the minimum educational qualifications mandated for regular recruitment. This, in their view, disqualifies the appellants from being absorbed into regular service.

(v). Outsourcing as a Legitimate Policy Decision: The respondents point out that they have chosen to outsource the relevant housekeeping and maintenance work to a private agency. This, they argue, is a legitimate administrative policy decision aimed at improving efficiency and cannot be interfered with by the courts.

(vi). No Fundamental Right to Regularization: Finally, the respondents underscore that no employee, merely by virtue of long-standing temporary or parttime engagement, acquires a vested right to be regularized. They maintain that the appellants' claims are devoid of any legal entitlement and that the High Court was correct in dismissing their petition.

10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas—a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as "part-time workers," the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

14. The abrupt termination of the appellants' services, following dismissal of their Original Application before the Tribunal, was arbitrary and devoid of any justification. The termination letters, issued without prior notice or explanation, violated fundamental principles of natural justice. It is a settled principle of law that even contractual employees are entitled to a fair hearing before any adverse action is taken against them, particularly when their service records are unblemished. In this case, the appellants were given no opportunity to be heard, nor were they provided any reasons for their dismissal, which followed nearly two decades of dedicated service.

15. Furthermore, the respondents' conduct in issuing tenders for outsourcing the same tasks during the pendency of judicial proceedings, despite a stay order from the Tribunal directing maintenance of status quo, reveals lack of bona fide intentions. Such actions not only contravened judicial directives but also underscored the respondents' unwillingness to acknowledge the appellants' rightful claims to regularization.

16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

17. As for the argument relating to educational qualifications, we find it untenable in the present context. The nature of duties the appellants performed-cleaning, sweeping, dusting, and gardening-does not inherently mandate formal educational prerequisites. It would be unjust to rely on educational criteria that were never central to their engagement or the performance of their duties for decades.

Moreover, the respondents themselves have, by their conduct, shown that such criteria were not strictly enforced in other cases of regularization. The appellants' long-standing satisfactory performance itself attests to their capability to discharge these functions, making rigid insistence on formal educational requirements an unreasonable hurdle.

18. The appellants have also established that individuals with lesser tenure or comparable roles were regularized by the respondents. The counsel for the appellants had submitted a seniority list for employees working as the Multi- Tasking Staff published by the Respondent Department on 04.03.2024 wherein the following employees were a part of the staff without the required educational qualification:

S. No. Name Educational Qualification Date of Continuous CWC Service Temporary or Permanent posts Category

1. Krishna s/o Lt. Khajan Singh Illiterate 26.07.1988 Permanent SC
2. Naresh Devi w/o Ld. Surendra Kumar Illiterate 29.10.1991 Permanent Gen
3. Shiv Kumar s/o Lt. Pratap Singh Illiterate 08.09.1994 Permanent SC
4. Radhe Shyam s/o Lt. Sadhu Ram Maurya Illiterate 30.05.2012 Permanent OBC
5. Raju s/o Shri Banshi Lal Illiterate 12.07.1994 Permanent SC
6. Shahjad Ali s/o Naushad Ali Illiterate 01.07.2010 Permanent Gen
7. Punam w/o Lt. Raj Kumar Illiterate 21.09.2015 Permanent SC
8. Nirmala w/o Lt. Raju Illiterate 02.02.2022 Temporary SC

A bare perusal of the aforementioned list shows the preferential treatment accorded to these individuals, despite their shorter service durations and no educational qualification. This exemplifies discriminatory behaviour and lack of uniformity in the respondent department's approach. Such disparity violates the principles of equality enshrined in Articles 14 and 16 of the Constitution of India and cannot be sustained in law.

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization

of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in *Uma Devi* (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements.

However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization.

In a recent judgement of this Court in *Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.*⁵, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgement have been reproduced below:

"6. The application of the judgment in *Uma Devi* (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of *Uma Devi* (supra).

7. The 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."

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment.

Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration⁶ encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgement of the United State in the case of *Vizcaino v. Microsoft Corporation*⁷ 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 longterm obligations owed to employees. These practices manifest in several ways:

Misuse of "Temporary" Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in *Uma Devi* (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure.

However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi* (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale.

By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.

28. In view of the above discussion and findings, the appeals are allowed. The impugned orders passed by the High Court and the Tribunal are set aside and the original application is allowed to the following extent:

i. The termination orders dated 27.10.2018 are quashed;

ii. The appellants shall be taken back on duty forthwith and their services regularised forthwith. However, the appellants shall not be entitled to any pecuniary benefits/back wages for the period they have not worked for but would be entitled to continuity of services for the said period and the same would be counted for their post-retiral benefits.

29. There shall be no order as to costs.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

December 20, 2024

1 Hereinafter referred to as, "the Tribunal"

2 In short, "CWC"

3 (2006) 4 SCC 1

4 (2006) 4 SCC 1

5 [2024] 1 S.C.R. 1230

6 International Labour Organization- Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

7 97 F.3d 1187 (9th Cir. 1996)

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