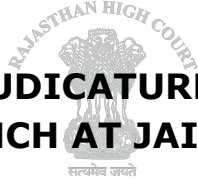


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 2417/2003

Jawahar Navodaya Vidyalaya, Nandla, District, Ajmer, (Raj.)
through its Principal.

-----Petitioner

Versus

1. Dhanraj Choudhary S/o Shri Mangi Lal Ji, R/o Bubaniya Via Nasirabad, District Ajmer.
2. The Judge, Labour Court, Industrial Tribunal, AJmer (Rajasthan).

-----Respondents

Connected With

S.B. Civil Writ Petition No.2431/2003

Jawahar Navodaya Vidyalaya, Nandla, District Ajmer Raj.
through its Principal.

-----Petitioner

Versus

1. Amar Singh S/o Shri Ratan Singh, R/o House No.35/75, Kali Mai Mohallah, Nasirabad, District Ajmer.
2. The Judge, Labour Court, Industrial Tribunal, Ajmer, Rajasthan.

-----Respondents

S.B. Civil Writ Petition No. 5412/2009

Dhanraj Choudhary S/o Mangilal, aged about 33 years, R/o Village & Post Bupaniya, Nasirabad, District, Ajmer (Rajasthan).

-----Petitioner

Versus

1. Jawahar Navodaya Vidyalaya through its Principal, Nandla, Nasirabad, District Ajmer Post Box No.12 (Pin-305601).
2. Sabina Taj, Principal, Jawahar Navodaya Vidyalaya, Nandla, Nasirabad, District Ajmer Post Box No.12 (Pin-305601).

-----Respondents

S.B. Civil Writ Petition No. 6569/2009

Amar Singh S/o Ratan Singh, aged about 41 years, R/o 3575, Kalimai Mohalla, Nasirabad, District Ajmer.

-----Petitioner

Versus

1. Jawahar Navodaya Vidyalaya through its Principal, Nandla, Nasirabad, District Ajmer Post Box No.12 (Pin-305601).
2. Principal, Jawahar Navodaya Vidyalaya, Nandla, Nasirabad, District Ajmer Post Box No.12 (Pin-305601).

-----Respondents

For Petitioner(s) : Mr. Krishna Verma
For Respondent(s) : Mr. Sunil Samdariya with
Mr. Arihant Samdariya &
Mr. Ramesh Chand Bairwa

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

Date of conclusion of arguments	::	08.01.2026
Date on which judgment was reserved	::	08.01.2026
Whether the full judgment or only the operative part is pronounced	::	Full Judgment
Date of pronouncement	::	19.01.2026

1. Facts, controversy and cause of action in all the above writ petitions are interlinked and interwoven, therefore, all the above writ petitions were heard analogously and are being decided by this common judgment.
2. As regards S.B. Civil Writ Petitions No.2417/2003 & 2431/2003 are concerned. These writ petitions are directed against awards dated 04.04.2001 and 07.04.2001 passed by learned Labour Court, whereby while answering the reference in favour of workmen, directions regarding reinstatement, continuity in services and backwages were given by the learned Labour Court.
3. So far as, S.B. Civil Writ Petitions No.5412/2009 & 6569/2009 are concerned, these writ petitions have been filed by the workmen alleging arbitrary and illegal termination of their services during the pendency of S.B. Civil Writ Petitions No.2417/2003 & 2431/2003 and disregard of orders passed by this Court and have further claimed for benefit of regularization.

4. For the purpose of convenience, facts stated in S.B. Civil Writ Petitions No.2417/2003 & 5412/2009 are being taken into consideration.

5. It is stated by the workman in S.B. Civil Writ Petition No.2417/2003 that Jawahar Navodaya Vidyalaya is the residential school, where the sanctioned post of cook/mess-helpers was already occupied, however, on account of discharging the over-burden of work and to meet out the contingencies, the workman-Dhanraj Choudhary was engaged as mess-helper on 21.07.1993, where he worked only up to 16.05.1996. Alleging the termination to be in violation of Section 25F of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), the workman raised industrial dispute which was ultimately referred to the learned Labour Court, where the workman filed his statement of claim submitting therein that initially he was engaged on 21.07.1993 for monthly wages of Rs.450/- and thereafter, the wages were increased up to Rs.650/- per month. The workman specifically worked for almost three years, however, without giving any prior notice, wages in lieu of notice and in non-compliance of principles of natural justice as well as provisions of Section 25F of the Act of 1947, his services were terminated w.e.f. 16.05.1996 and after his termination, Dayal Meena, Rasool Khan and Alauddin were engaged as mess-helpers in place of the workman. It was submitted that the work of mess-helper was a work of perennial and regular nature and the workman was entitled for regular pay scale of Rs.750-940/- as well as other benefits.

6. The statement of claim was opposed by filing reply as well as an application with regard to maintainability of the claim and it was submitted that Jawahar Navodaya Vidyalaya being school does not fall within the category of 'industry', hence, the workman cannot invoke the provisions of the Act of 1947. It was further submitted that the workman was not regularly appointed rather was engaged in order to discharge the over-burden of work and to meet out the urgent contingencies for a limited period and on completion of work, his services have been discontinued, which do not come within the purview of retrenchment and is recovered by Section 2(oo)(bb) of the Act of 1947.

7. Thereafter, both the parties led evidence in support of their respective cases and the reference was answered by learned Labour Court vide award dated 04.04.2001, whereby the termination of services of the workman was held in violation of provision of Section 25F of the Act of 1947 and directions were given of his reinstatement along with all consequential benefits including backwages @ Rs.700/- per month and continuity in service was granted.

8. Learned counsel for the employer submitted that the award dated 04.04.2001 is against the pleadings of the case, material and evidence on record as well as in violation of law prevailing at the relevant time. It was submitted that learned Labour Court has failed to appreciate that the employer is a school, which does not come within the ambit of 'industry' as per the Act of 1947 and no industrial work/manufacturing work is being carried out in the school. Hence, provisions of the Act of

1947 cannot be invoked against the employer. Learned Labour Court has also not considered that the services of the workman were never terminated rather he himself abandoned the services, therefore, compliance of Section 25F of the Act of 1947 was not required. Yet, learned Labour Court has wrongly applied the provisions of law and has committed serious jurisdictional error by passing award dated 04.04.2001.

9. *Per contra*, learned counsel for the workman supported the award and opposed the writ petition and submitted that the award has been passed by learned Labour Court after meticulous examination of the entire material on record and in the light of legitimate principles of law, after analyzing each and every objection raised by the employer and by giving reasoned and sound finding over such objections.

10. It is further submitted by learned counsel for the workman that the objection raised by the employer that the school does not come within the four corners of 'industry' as defined under the Act of 1947, was totally inconceivable, baseless and unfounded, hence, the objection was rightly rejected by learned Labour Court in the light of Constitutional Bench judgment of Hon'ble Supreme Court in the case of **Bangalore Water Supply & Sewerage Board Vs. A. Rajappa** reported in **1978 (2) SCC 213** and it has been held that the triple test prescribed in the aforesaid judgment of the Hon'ble Supreme Court is very much attracted in the case of school.

11. Learned counsel for the workman has also relied upon another judgment of Hon'ble Supreme Court in the case of **Miss**

A. Sundarambal Vs. Government of Goa, Daman and Diu & Ors. reported in **AIR 1988 SC 1700** in support of his contention that the school has been considered as an 'industry' for the purposes of the Act of 1947.

12. Learned counsel for the workman further submitted that as regards finding with regard to completion of 240 days by the workman in 12 calendar months just preceding the date of termination as well as not issuing any notice by the employer, nor making any other compliance required under Section 25F of the Act of 1947 requires appreciation of evidence and on the basis of analyzing the evidence, factual finding has been given by the learned Labour Court, which cannot be interfered in the writ petition under Articles 226 & 227 of the Constitution of India, more particularly when the employer has utterly failed to point out any manifest and apparent illegality and jurisdictional error on the part of the learned Labour Court, hence, he prayed for dismissing the writ petition.

13. While pressing the writ petitions filed by the workmen bearing S.B. Civil Writ Petitions No.5412/2009 & 6569/2009, it was submitted by learned counsel for the workmen that the award passed by the learned Labour Court was put to challenge by the employer by way of filing S.B. Civil Writ Petitions No.2417/2003 & 2431/2003. In the aforesaid writ petitions on 04.04.2003, it was submitted by learned counsel for the employer that in compliance of award passed by learned Labour Court, the workmen have already been reinstated in services. After recording such statements of learned counsel for the employer, Co-ordinate

Bench of this Court stayed operation of impugned award to the extent of payment of backwages only. It is further submitted that thereafter, the workmen continued with the employer as the directions with regard to reinstatement by the learned Labour Court was never stayed by this Court. He submitted that after reinstatement, the workmen were being paid a sum of Rs.23/- per day, therefore, workmen submitted applications in S.B. Civil Writ Petitions No.2417/2003 & 2431/2003, praying therein for grant of minimum wages as prescribed by the Minimum Wages Act, 1948. Such applications filed by the workmen were allowed by this Court vide order dated 24.10.2008. In consequences thereof, the employer was under an obligation to pay minimum wages to the workmen, however, just to avoid the liability and to frustrate the cause of workmen, in quite arbitrary and malicious manner, orders dated 31.03.2009 were issued by the employer allegedly showing compliance of Section 25F of the Act of 1947, and the services of workmen were terminated. While issuing notices in the above writ petitions, orders dated 31.03.2009 were stayed by this Court, hence the workmen are still continuing in services.

14. It was further submitted that such termination was not only malicious but was an audacious as well as contemptuous act of the employer, who tried to over-reach the process of the Court as well as to defeat the orders earlier passed by this Court in S.B. Civil Writ Petitions No.2417/2003 & 2431/2003. While challenging such termination orders in S.B. Civil Writ Petitions No.5412/2009 & 6569/2009, the workmen also submitted that they have been working for last 16 years as on the date of filing of writ petitions

and they were being paid a meagre amount whereas post of mess-helper is a sanctioned and encadred post where regular pay scale is admissible. They have been discharging regular duties of the similar nature which are being discharged by the employees who have been appointed in the regular pay scale. It was submitted that such long continuance of the employee gives rise to the presumption that the requirement and work is there, yet for the reasons best known to the workmen, they have not been regularized on the post of mess-helper, therefore, he prayed for regularization of services of the workmen and for granting the regular pay scale along with all consequential benefits.

15. While opposing the S.B. Civil Writ Petitions No.5412/2009 & 6569/2009, it has been submitted by learned counsel for the employer that admittedly workmen have not been appointed after following regular process of recruitment/selection as prescribed under the Rules. Workmen are daily wagers, who were engaged for meeting out the contingencies, therefore, they are not entitled either for regular pay scale or regularization. It was submitted that in the case of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** reported in **2006 (4) SCC 1**, the Hon'ble Supreme Court has deprecated the practice of engaging the labour on casual basis and thereafter, regularizing the same, which prejudices the exercise of regular recruitment on the cadred post.

16. It was also submitted by learned counsel for the employer that on behalf of the employer as the initial engagement of the workmen was irregular and not as per statutory Rules and,

there was no sanctioned post, therefore, no mistake whatsoever was committed by the employer in terminating the services of the workmen vide orders dated 31.03.2009, after making out compliance of Section 25F of the Act of 1947 and payment of pay in lieu of notice as well as retrenchment compensation. Therefore, learned counsel for the employer prayed for rejecting the above writ petitions.

17. Heard learned counsel for the parties and perused the record.

18. So far as the issue raised by the employer in S.B. Civil Writ Petitions No.2417/2003 & 2431/2003 that the school is not an 'industry', therefore, the learned Labour Court has committed serious error of jurisdiction in entertaining the reference and deciding the same in favour of the workmen, it is suffice to observe that the issue is no longer res integra for the reason that in the light of guidelines laid down in the case of **Bangalore Water Supply & Sewerage Board (supra)**, the Hon'ble Supreme Court in the case of **Miss A. Sundarambal (supra)** has clearly held that the teacher working in any school may not be a workman, yet looking to the activities other than the educational work, which are carried out manually in a school, the school comes within the purview of 'industry'.

19. One of the points was also raised during arguments by learned counsel for the employer that the judgment of **Bangalore Water Supply & Sewerage Board (supra)** has further been referred for deciding the issue by a larger Bench, however, learned counsel has utterly failed to show any interim order staying the

operation of judgment in the case of **Bangalore Water Supply & Sewerage Board (supra)**, therefore, the aforesaid judgment is still holding the field and hence, the issue raised by the employer that the school is not an 'industry' is decided against the employer on the basis of aforesaid two judgments of Hon'ble Supreme Court.

20. So far as, the arguments raised by learned counsel for the employer that the workmen were engaged as daily wager in order to discharge over-burden of work, therefore, on completion of work in view of Section 2(oo)(bb) of the Act of 1947, discontinuance of their services cannot be termed as retrenchment, is totally irrational, arguments having no legal force. The employer has utterly failed to point out as to whether it was a condition of service that the workmen were appointed for a limited period or for completion of a particular project. Hence, the provision of Section 2(oo)(bb) of the Act of 1947 is not at all attracted. Under these circumstances, the employer was under a legal obligation to follow the provision of Section 25F of the Act of 1947 in its letter and spirit, the employer has utterly failed to establish before the learned Labour Court that in compliance of Section 25F of the Act of 1947, either notice or pay in lieu of notice was given to the workmen; and on the basis of material on record, a factual finding in this regard has been recorded by the learned Court below against the employer and in favour of the workmen that despite, completing more than 240 days in a calendar year just preceding the date of termination, the employer has terminated the services of the workmen in utter violation of

provision of Section 25F of the Act of 1947. Such finding is a finding of fact. In the case of **State of Haryana & Ors. Vs. Devi Dutt & Ors.** reported in **2006 (13) SCC 32**, the Hon'ble Supreme Court has clearly held that the High Court should not interfere in the factual findings arrived at by the learned Labour Court, until and unless, manifest and apparent perversity or jurisdictional error is established. In the instant case, no such illegality has been established by the employer. Para 8 of the aforesaid judgment is reproduced here under:

"8. The High Court ordinarily should not have interfered with the said finding of fact. We, although, do not mean to suggest that the findings of fact cannot be interfered with by the superior courts in exercise of their jurisdiction under Article 226 of the Constitution of India, but the same should be done upon application of the well-known legal principles such as: (1) when it is perverse; (2) when wrong legal principles have been applied; (3) when wrong questions were posed; (4) when relevant facts have not been taken into consideration; or (5) the findings have been arrived at on the basis of the irrelevant facts or on extraneous consideration."

21. In the light of above discussion, this Court does not find any jurisdictional error, perversity or illegality in the award dated 07.04.2001 & 04.04.2001 passed by the learned Labour Court and, therefore, S.B. Civil Writ Petitions No.2417/2003 & 2431/2003 are liable to be dismissed.

22. So far as, writ petitions preferred by workmen bearing S.B. Civil Writ Petitions No.5412/2009 & 6569/2009 are concerned, it is matter of record that while challenging the award dated 07.04.2001 & 04.04.2009, when the above S.B. Civil Writ Petitions No.2417/2003 & 2431/2003 were filed, it was admitted by learned counsel for the employer that in compliance of award, the workmen were already reinstated in service and on such

statement, this Court while admitting the petitions vide order dated 04.04.2003, only stayed the award to the extent of backwages and there was no stay on reinstatement. Thereafter, the workmen continued with the employer.

23. It is also significant to note that in the above S.B. Civil Writ Petitions No.2417/2009 & 2431/2009, applications were moved by the workmen for grating minimum wages which were allowed by this Court thereby directing the employer to make payment of minimum wages to the workmen.

24. It is apparent that in order to avoid payment of minimum wages in compliance of directions of this Court and to maliciously defeat the causes of workmen, orders dated 31.03.2009 were issued by the employer to terminate the services of workmen. Such order of termination was admittedly passed without taking any leave of this Court.

25. Having considered the submissions and the record, it is evident that during the pendency of the proceedings before this Court, a categorical statement was made by learned counsel for the employer that, pursuant to the award of the Labour Court, the workmen had already been reinstated in service. It was on the basis of this unequivocal statement that this Court, while granting interim protection, confined the stay order only to the payment of back wages and consciously permitted the reinstatement to operate. Once the employer accepted and acted upon the award to the extent of reinstatement, the relationship of employer and employee stood restored, subject to the final outcome of the writ petition. In such a situation, the employer was clearly bound by

judicial discipline and was under an obligation not to alter the status quo so created, except with the leave or permission of this Court. The subsequent action of terminating the services of the workmen during the subsistence of the said interim order, without seeking prior leave of this Court, cannot be termed as a bona fide exercise of power. On the contrary, it reflects a malicious and colourable exercise of authority, calculated to defeat the effect of the judicial order and to render the reinstatement illusory. Such conduct amounts to an attempt to overreach the process of the Court and strikes at the very root of the rule of law, which mandates that parties must act fairly and in good faith once the matter is sub-judice. This Court, therefore, strongly deprecates the action of the employer, which is not only legally impermissible but also undermines the sanctity of judicial proceedings. Consequently, the impugned termination orders dated 31.03.2009, having been passed in teeth of the subsisting interim order and without the leave of this Court, is unsustainable in law and are hereby quashed.

26. In the S.B. Civil Writ Petitions No.5412/2009 & 6569/2009, the workmen have also prayed for regularizing their services and emphasized that they were working at the relevant time for 16 years against meagre wages, which are not sufficient to maintain their family. By this time, workmen have completed more than 32 years of continuous service with the employer. It is also undisputed fact that the post of mess-helper is a sanctioned and encadred post in Jawahar Navodaya Vidyalaya and the work is of perennial nature.

27. The facts, which are largely undisputed, reveal that the workmen were initially engaged by the employer to meet administrative and functional requirements. Though the engagement was described as temporary/daily wager, workmen have continued in service uninterruptedly for more than three decades and have performed duties identical in nature to those discharged by regularly appointed employees. The workmen possess the requisite educational qualifications prescribed for the post and have worked under the direct control and supervision of the employer. Despite repeated representations, the employer has not taken any steps to regularize the workmen services.

28. *Per contra*, it has been submitted on behalf of the employer that the workmen' engagement was purely casual/temporary and does not confer any right to regularization. Regularization is contingent upon the existence of sanctioned posts and adherence to applicable service rules, and cannot be granted merely on the basis of continuity of service. The employer has acted in accordance with the rules, and there is no illegality or arbitrariness in denying permanent employment. Granting regularization outside the prescribed framework would undermine structured recruitment, budgetary discipline, and merit-based selection. Therefore, the workmen have no entitlement, and the writ petitions are not maintainable and deserve to be dismissed.

29. The principal issue that arises for consideration is whether the workmen, having rendered long and continuous service while performing duties of a regular and perennial nature, are entitled to regularization, or not and whether the refusal of the

employer to consider such regularization withstands constitutional scrutiny.

30. At the threshold, it is necessary to reiterate that public employment is governed by constitutional mandates of equality and fairness enshrined under Articles 14 and 16 of the Constitution of India. The law is well settled that regularization cannot be claimed as a matter of right and that appointments made in flagrant violation of recruitment rules cannot be sustained merely on the basis of length of service. However, it is equally well established that constitutional principles do not permit the State/employer to exploit labour by keeping employees in a state of perpetual temporariness while extracting regular and continuous work.

31. The jurisprudence on regularization has evolved through a series of authoritative pronouncements of the Hon'ble Supreme Court. In **Secretary, State of Karnataka (supra)**, the Constitution Bench held that regularization is not a mode of recruitment and illegal appointments made in contravention of Articles 14 and 16 cannot be regularized as a matter of right. The primary concern of the Apex Court was to prevent backdoor entry into public service. At the same time, the Court carved out a significant exception permitting one-time regularization of employees who had rendered ten years or more of continuous service against sanctioned posts, possessed requisite qualifications, and whose appointments were not illegal but merely irregular.

32. The contours of this exception were clarified in **State of Karnataka & Ors. Vs. M.L. Kesari & Ors.** reported in **(2010) 9 SCC 247**, wherein the Hon'ble Supreme Court held that the exception carved out in **Umadevi (supra)** must be applied in a purposive and pragmatic manner. The Court emphasized that the benefit of regularization cannot be denied on hyper-technical grounds or due to the failure of the State to undertake the one-time exercise contemplated in **Umadevi (supra)**. Administrative delay or inaction, it was held, cannot operate to the prejudice of long-serving employees.

33. In **State of Punjab & Ors. Vs. Jagjit Singh & Ors.** reported in **(2017) 1 SCC 148**, although the issue directly pertained to pay parity, the Hon'ble Supreme Court reinforced the doctrine of dignity of labour and held that extraction of identical work from temporary or daily-wage employees while denying them equal remuneration amounts to exploitation and violates Article 14. This judgment infused substantive equality into service jurisprudence and laid the groundwork for later decisions addressing prolonged ad-hocism.

34. The recent decisions of the Hon'ble Supreme Court further develop this jurisprudence. In **Jaggo Vs. Union of India & Ors.** reported in **2024 SCC OnLine SC 3826**, the Court held that mere nomenclature such as "temporary" or "contractual" cannot defeat substantive rights where the employee performs duties that are perennial and essential to the functioning of the establishment. The Court categorically held that **Umadevi (supra)** cannot be invoked as a shield to perpetuate exploitative

arrangements and that prolonged continuation itself creates an obligation on the employer to rationalize or regularize the engagement.

35. In **Dharam Singh & Ors. Vs. State of U.P. & Anr.** reported in **2025 SCC OnLine SC 1735**, the Apex Court held that the State, as a constitutional and model employer, cannot extract regular work from ad hoc or daily-wage employees without sanctioning posts or initiating regular recruitment. Prolonged ad-hocism was held to be violative of Articles 14, 16 and 21, and executive inaction in creating posts or undertaking recruitment was held to be subject to judicial review.

36. Similarly, in **Shripal & Anr. Vs. Nagar Nigam, Ghaziabad** reported in **2025 SCC OnLine SC 221**, the Hon'ble Supreme Court held that employees performing essential civic duties on a continuous basis cannot be left in a state of perpetual insecurity. The Court directed reinstatement and mandated initiation of a fair, transparent and time-bound process for regularization, reiterating that perennial public duties cannot be discharged through endless temporary arrangements.

37. A conjoint reading of the aforesaid judgments demonstrates that while **Umadevi (supra)** continues to prohibit regularization of illegal appointments, it does not authorize the State to perpetuate ad-hocism, avoid creation of posts, or exploit labour under the guise of constitutional compliance. The focus has decisively shifted from the form of appointment to the substance of employment, namely the nature of duties, length of service, existence of sanctioned work, and the conduct of the employer.

38. Applying the aforesaid principles to the facts of the present case, this Court finds that the workmen have rendered long and uninterrupted service, possesses the requisite qualifications, and have performed duties of a perennial and essential nature under the direct control of the employer. The employer has failed to demonstrate that the workmen' engagement was illegal or tainted by fraud. The continued engagement of the workmen without initiating regular recruitment or considering regularization reflects administrative arbitrariness and is contrary to the constitutional obligation of the State to act as a model employer.

39. The refusal to regularize the workmen, viewed in the light of the law laid down by the Hon'ble Supreme Court in the cases of **Jaggo (supra)**, **Dharam Singh (supra)** and **Shripal (supra)**, cannot be sustained. To permit the employer to continue such an arrangement would amount to endorsing exploitation and would defeat the constitutional guarantee of fairness, equality and dignity of labour.

40. In the case of **Badrilal Vs. State of Rajasthan [D.B. Special Appeal (Writ) No.937/2022]**, where the regularization was opposed by the respondent-Government on the ground that the post was not sanctioned, after taking into consideration of the aforesaid judgment of Hon'ble Supreme Court, the Division Bench of this Court has held as under:

"6. Thus we examined the facts of the case, we find that the appellant has continued to serve the respondents for almost 28 years till he attained superannuation on 29.02.2024. The services would, therefore, come within the ambit of perennial in nature and therefore, it cannot be said that there

was no post existing for the work which he had been performing. The labour temporary and daily wages as used for denying him the benefit as a clear misuse of power. Keeping in line the consideration as laid down hereinabove, we find that the view taken by the learned Single Judge is not in consonance with the law as settled by the Supreme Court and the judgment passed by the learned Single Judge dated 06.05.2022, therefore, cannot be sustained. The learned Single Judge has failed to take into consideration as on the day when Umadevi's judgment was pronounced, the petitioner has completed more than ten years of service. Keeping in view thereto, we hold that the petitioner was entitled to be regularised on completion of ten years of service, i.e., w.e.f. 10.07.1996. We are pained to observed that respondents have failed to perform their legal duty for implementing Umadevi's judgment in the case of petitioner.

7. In line with the aforesaid judgments, recently in **Dharm Singh Vs. State of UP: 2025 INSC 998**, the Supreme has held that the State and its Authorities cannot act as private employers it has coined the terms Constitutional Employer to the State and employees working with the State would have to be considered and regularized on account of the perennial work available with them. In view of the continuous litigation coming up, the Apex Court observed as under:-

"17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.

18. Moreover, it must necessarily be noted that "ad-hocism" thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If "constraint" is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform

every decision affecting those who keep public offices running.

19. Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the material indicating vacancies and comparator regularisations, we issue the following directions:

i. **Regularization and creation of Supernumerary posts:** All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.

ii. **Financial consequences and arrears:** Each appellant shall be paid as arrears the full difference between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization /retirement/death, as the case may be. Amounts already paid under previous interim directions shall be so adjusted. The net arrears shall be released within three months and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.

iii. **Retired appellants:** Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgement.

iv. **Deceased appellants:** In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the arrears under clause (ii) up to the date of death, together with all terminal/retiral dues recalculated consistently with clause (i), within three months of this Judgement.

v. **Compliance affidavit:** The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary

of the U.P. Education Services Selection Commission or the prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgement.

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling "reconsiderations," and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India."

8. We need not further delve on the said issue at our level after the pronouncement of the Apex Court and conclude that the action of the respondents deserves to be deprecated. The appellant who has attained superannuation would be entitled to be considered as regularized on the post on completion of 10 years of service. His pay and allowances shall accordingly be calculated and actual arrears of salary after deducting daily wages amount paid to him shall be released within the period of three months. The respondents shall also make pay fixation including the benefits of ACP applicable on completion of 10, 20 and 30 years of service and pay the arrears. The pension shall also be calculated and accordingly released along with all other retiral benefits after deducting the benefits which have been released to the appellant which may include gratuity amount. The entire exercise shall be conducted within a period of three months. The appellant would also be entitled to receive interest on the arrears @ 6% per annum. So far as pension and retiral benefits are concerned.

41. Accordingly, for the discussions made and reasons assigned hereinabove, S.B. Civil Writ Petitions No.2417/2003 & 2431/2033, are hereby, dismissed.

42. So far as, S.B. Civil Writ Petitions No.5412/2009 & 6569/2009 are concerned, the writ petitions are allowed, the termination orders dated 31.03.2009 are hereby quashed and set aside and it is, hereby, directed as follows:

(i) The employer shall undertake the exercise of regularizing the services of the workmen against a post corresponding to the nature of duties presently being discharged by the workmen, in terms of the principles laid down by the Hon'ble Supreme Court.

(ii) Such regularization shall be effected with effect from the date on which the workmen completed ten years of continuous service, subject to verification of qualifications and eligibility, which shall not be rejected on hyper-technical grounds.

(iii) Upon regularization, the workmen shall be entitled to continuity of service and all consequential service benefits, including fixation of pay, seniority and pensionary benefits, in accordance with law. However, arrears of salary shall be restricted to a period of three years preceding the filing of the writ petition.

(iv) The entire exercise shall be completed within a period of three months from the date of receipt of a certified copy of this judgment.

43. Copy of this order be placed in each connected file.

(ANAND SHARMA),J