

३१. अतः सभी यचिकाएं बलहीन होने के कारण निरस्त की जाती है।

(2025) 3 ILRA 187
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.03.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 7683 of 2021

Ras Bihari Srivastava ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Awadh Behari Singh

Counsel for the Respondents:

C.S.C., MJ Akhtar

A. Service Law - Regularisation - U.P. Regularisation of Persons Working on Daily Wages or on Work-charge or on Contract in Government on Group 'C' and Group 'D' Posts (Outside Purview of the U.P. Public Service Commission) Rules, 2016 - Group 'D' employee engaged on contractual basis - Denial of regularisation on technical grounds - Held, impermissible - Employer is a model employer - Has to act fairly - Nomenclature not determinative - Nature of work, continuity of service, and perennial need to be considered - Writ petition allowed.

B. Service Law - Regularisation - Petitioner, a Group-D multipurpose employee engaged on contractual basis, had discharged various duties assigned to him without interruption. His claim for regularisation was declined on the ground that he did not possess the technical qualification for appointment as Pump Operator and was a contractual employee. Held : Denial of regularisation on such

technical grounds amounted to unfair labour practice. Court emphasized that the real nature of employment must be determined by lifting the veil and examining the duties performed, duration of service, and the ongoing need for such services. Court further observed that multipurpose employees, who perform diverse tasks under the direction of the employer, cannot be denied regularisation solely due to the absence of qualification for one specific role, particularly when they are willing to be appointed to other Group-D posts for which they are otherwise eligible. Respondents were directed to consider the case of the petitioner for regularisation in Group-D category . (Para 8, 11, 15)

Allowed. (E-5)

List of Cases cited:

Jaggo Vs U.O.I. & ors. reported at MANU/SC/1403/2024

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Heard Sri Awadh Behari Singh, learned counsel for the petitioner, Sri M.J. Akhtar, learned counsel for the respondent no. 3 and learned Standing Counsel for the State respondents.

2. By the impugned order the claim of regularization of the petitioner as Class-IV employee has been declined solely on the footing that he does not possess the qualification of pump operator.

3. Petitioner was initially appointed as pump operator on 15.05.1995 in the respondent Nagar Palika Parishad, Kushinagar. The petitioner was appointed on Class-IV post, and has been discharging duties of different categories of Class-IV employees like Safai Nayak. The respondents in their counter affidavit as admitted to the fact that the petitioner is a

Group-D employee engaged on contractual basis. According to the counter affidavit different kinds of duties were being discharged by the petitioner as per the work assigned to him by respondent no. 4. A Group-D employee has to perform different roles as per the direction of the employer.

4. Undisputedly the petitioner has been functioning continuously without interruption from the date of his appointment. He is a multi-purpose employee under the Group-D category. □

5. Even as per the stand of the respondents Group D employees who are appointed on contract are multipurpose employees. The said class of employees can be detailed for a variety of jobs by the employer as per departmental needs. In fact the concept of multipurpose employees entails that the said pool of employees can perform multifarious tasks or sundry jobs and may not be restricted to a particular kind of work or only be confined to a specific duty. The said employees to cannot refuse to perform such duties as may be assigned by the employer.

6. The claim of the petitioner for regularisation is being made on the strength of rights vested in daily wage employees under the U.P. Regularisation of Persons Working on Daily Wages or on Work-charge or on Contract in Government on Group 'C' and Group 'D' Posts (Outside Purview of the U.P. Public Service Commission) Rules, 2016. The petitioner satisfies the criteria for regularisation as contemplated in the said Regularisation Rules, 2016 and is entitled for regularisation under the said Rules.

7. The counter affidavit discloses that minimum eligibility qualifications for

being appointed as regular pump operator includes technical qualifications. As per the stand of the respondents the petitioner does not possess the aforesaid technical qualifications and hence cannot be regularized on the post of pump operator.

8. In case the petitioner does not possess the aforesaid qualifications he may not be appointed as a pump operator. However, this fact does not in any manner dilute his claim to be appointed on other posts in the Group-D category for which he is qualified. The eligibility of petitioner for regularisation on a Group-D post for which possesses the qualification has already been affirmed in the preceding part of the discussion. Moreover, the petitioner before this Court has unequivocally stated that he is prepared to join any post under the Group-D category and shall perform any other duties as may be assigned to him by the employer.

9. Continuance of the petitioner on the Group-D post attests the fact that the need of the department is perennial in nature. The respondents have admitted that there are vacant posts of Group-D employees under different categories.

10. The denial of regularisation by the impugned order by resorting to highly technical grounds is an unfair practice adopted by a model employer. The said practice amounts to exploitation of the employees which cannot be countenanced by this Court.

11. The other ground of non suiting the claim of the petitioner for regularization is that he is a contractual employee. The law is alert to various devices adopted by employers to deprive class D employees of their rights, and the Courts have set their

face against any exploitative practice adopted by a State employer. In such cases the Court has to go beyond the nomenclature of the appointment by tearing the veil. The Court may examine the nature of duties performed by an employee, length of service and other relevant factors (if any) in the facts and circumstances of a case. In light of such enquiry the Court may determine the nature of employment and the rights of the employee. The discussion has the benefit of authorities.

12. The Supreme Court in **Jaggo Vs Union of India and others reported at MANU/SC/1403/2024** noticed the consequences of misclassifying employees to circumvent providing benefits. The relevant paras are quoted hereunder:

24. The landmark judgement of the United State in the case of *Vizcaino v. Microsoft Corporation*⁴ serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. It highlights the judiciary's role in

rectifying such misclassifications and ensuring that workers receive fair treatment.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- 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.?

13. The case of the petitioner is clearly covered by the holding of the Supreme Court. Responsibility is cast on the respondents to implement the law laid down by the Supreme Court in ***Jaggo Vs Union of India (supra)***.

14. The impugned order dated 12.03.2021 is liable to be set aside and is set aside.

15. The respondents are directed to pass appropriate orders directing regularization of the petitioner as per the seniority list of Group-D post who have been engaged on daily wages/contract basis within a period of two months from the date of receipt of a certified copy of this order.

16. The writ petition is allowed.
