IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18289 of 2015

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1. Madhwi Jha Wife of Late Amit Kumar Pandey, Resident of C/o Deo Kumari Jha, Dr. Narayan Babu ki gali, Nanmuhian, P.S.- Sultanganj, P.O.- Mahendru, District- Patna-800001.
2. Jyoti Ranjan, Wife of Manoj Ranjan, Resident of Bhoot Nath Road, LF-6, LIC Housing Colony, Block No. 5, Flat No. 315, Patna.
3. Raju Kumar, Son of Late Laxmi Prasad, Resident of Navratanpur, Postal Park, P.S.- Kankarbagh, District- Patna-800001.
4. Sheela Devi, Wife of Sri Jai Raghu Nandan Ran, Resident of Parsa Bazar, Chanakya Colony, Road No.4, P.S.- Parsa Bazar, P.O.- Kurthor, District- Patna.
5. Kishore Kumar Jha, Son of Sri Bighnesh Jha, Resident of Boring Canal Road, Flat No.202, Buddha Colony, P.S.- Buddha Colony, District- Patna.
6. Tara Devi, D/o- Late Bijendra Paswan, Resident of Salimpur Ahra, P.S.- Gandhi Maidan, District- Patna.
7. Munna Rajak, Son of Late Etwari Rajak Khazanchi Road, P.O.- Bankipur, P.S.- Pirbahore, District- Patna
8. Mitali Mitra, Wife of Mr. Vishwaroop Kumar Gupta, Gupta Diesel Service, Kankarbag, P.S.- Kankarbag, District- Patna.

... ... Petitioner/s

Versus

1. The Patna University through its Registrar Patna University, Patna.
2. The Vice Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Principal Magadh Mahila College, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 6125 of 2015

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1. Madhwi Jha Wife of Late Amit Kumar Pandey. Resident of C/o Deo Kumari Jha, Dr. Narayan babu ki gali, Nanmuhian, P.S.- Sultanganj, P.O.- Mahendru, District - Patna - 800006.
2. Jyoti Ranjan. Wife of Manoj Ranjan. Resident of Bhoot Nath Road, LF-6, LIC Housing Colony, Block No.5, Flat No. 315, Patna.
3. Raju Kumar. Son of Late Laxmi Prasad. Resident of Navratanpur, Postal Park, P.S.- Kankarbagh, District - Patna - 800001.
4. Vishnu Prasad. Son of Late Moti Rana. Resident of Magadh Mahila College, North Gandhi Maidan, P.S.- Gandhi Maidan, District - Patna.

5. Sheela Devi. Wife of Sri Jai Raghu Nandan Ram. Resident of Parsa Bazar, Chanakya Colony, Road No.4, P.S.- Parsa Bazar, P.O.- Kurthor, District - Patna.
6. Kishore Kumar Jha. Son of Sri Bighnesh Jha. Resident of Boring Canal Road, Flat No. 202, Buddha Colony, P.S.- Buddha Colony, District - Patna.
7. Naresh Prasad. Son of Late Mabir Mahto. Resident Sampat Chak, Sohli Nagar Par, District - Patna - 800007.
8. Tara Devi. D/o Late Bijendra Paswan. Resident of Salimpur Ahra, P.S.- Gandhi Maidan, District - Patna.
9. Munna Rajak. Son of Late Etwari Rajak. Khazanchi Road, P.O.- Bankipur, P.S.- Pirbahore, District - Patna.

... ... Petitioner/s

Versus

1. The Patna University through its Registrar Patna University, Patna.
2. The Vice Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Principal Magadh Mahila College, Patna.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 18289 of 2015)
For the Petitioner/s : Mr. Sidharth Prasad, Advocate
Mr.Om Prakash Kumar, Advocate
Mr. Sunit Kumar, Adv
Ms. Swetang Sinha, Advocate
Mr. Shashank Shekhar, Advocate
Mr. Shantam Kriti, Advocate
For the Respondent/s : Mr.Digvijay Singh, Advocate
For P.U. : Mr. Mrigank Mauli, Sr. Advocate
Mr. Manish Dhari Singh, Advocate
For Magadh Mahila Coll. : Mrs. Kalpana, Advocate
(In Civil Writ Jurisdiction Case No. 6125 of 2015)
For the Petitioner/s : Mr. Sidharth Prasad, Advocate
Mr. Om Prakash Kumar, Advocate
For the Respondent/s : Mr.Digvijay Singh, Advocate
For P.U. : Mr. Mrigank Mauli, Sr. Advocate
Mr. Manish Dhari Singh, Advocate
For Magadh Mahila Coll: Mrs. Kalpana, Advocate

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

CAV JUDGMENT

Date : 23-12-2025

Re: CWJC No. 18289 of 2015.

Heard the parties

2. The petitioners in the present writ application has prayed for issuance of a writ of certiorari for quashing the office order dated 19.09.2015 issued on the direction of the Principal, Magadh Mahila College, Patna University, Patna, under the signature of Head Clerk of the College, whereby and where under the petitioners services have been terminated in purported compliance of alleged telephonic instructions of the Vice-Chancellor, for having participated in the strike of the employees union during the period 10.08.2015 to 09.09.2015.

3. Learned counsel for the petitioners submits that the petitioners have approached this Hon'ble Court assailing the legality, validity and propriety of the office order dated 19.09.2015 (Annexure-18), issued under the signature of the Head Clerk, Magadh Mahila College, Patna University, Patna, allegedly on the direction of the Principal, whereby the services of the petitioners were terminated on the purported ground that they had participated in the employees' union strike during the period 10.08.2015 to 09.09.2015, allegedly in compliance of telephonic instructions of the Vice-Chancellor.

4. It is submitted that the impugned order is ex facie arbitrary, without jurisdiction, stigmatic in nature and violative of Articles 14, 16 and 21 of the Constitution of India, inasmuch as the same has been issued in complete disregard of the binding agreement dated 08.09.2015, duly approved by the Vice-Chancellor on 09.09.2015 (Annexure-13), which categorically stipulated that there shall be no victimization of any employee for participation in the said strike period. Learned counsel submits that while the strike was called off pursuant to the said settlement and all employees were required to be treated uniformly, the petitioners alone have been singled out for hostile discrimination, whereas other similarly situated ad-hoc/daily wage employees, including those junior to the petitioners, have been allowed to continue in service.

5. Learned counsel further submits that the petitioners were engaged between 1995 and 1997 against sanctioned vacant Class-III and Class-IV posts after a due process of selection conducted by a duly constituted Selection Committee comprising the Principal, Heads of Departments and the Bursar, pursuant to approval granted by the Vice-Chancellor vide order dated 23.11.1995. The petitioners joined on different dates, particulars whereof are detailed in paragraph 8 of the writ petition, and copies

of their joining reports have been brought on record as Annexure-2 (Series). Since their initial engagement, the petitioners have continuously discharged their duties on perennial posts without any complaint whatsoever.

6. It is contended that considering the long and continuous service rendered by the petitioners on sanctioned posts, the Senate Committee for Absorption, constituted by the Patna University, after extensive deliberations in as many as twelve meetings, recommended the absorption/regularization of employees like the petitioners who had been appointed on daily wages against sanctioned vacant posts upto 31.12.2000 and were continuing in service. The names of the petitioners find place in the Committee's report dated 05.11.2003 (Annexure-3), and the Vice-Chancellor himself was the Member-cum-Convenor of the said Committee. Learned counsel submits that despite such recommendation, the petitioners were arbitrarily denied regularization, whereas several other employees from the same list were regularized from time to time, details whereof have been brought on record along with notifications dated 29.01.2004, 04.04.2006, 05.12.2011 and 29.12.2011 (Annexure-6 Series), thereby demonstrating a clear case of pick-and-choose and hostile discrimination.

7. It is further submitted that the petitioners were compelled to approach this Hon'ble Court earlier by filing CWJC No. 6125 of 2015, seeking enforcement of the Committee's decision dated 05.11.2003, wherein this Hon'ble Court, vide order dated 08.07.2015 (Annexure-10), was pleased to issue notice to the Principal and call for counter affidavits from the University authorities. Learned counsel submits that the impugned action of termination is a direct fallout of the said judicial proceedings and amounts to overreaching the process of the Court, being hit by the doctrine of lis pendens.

8. With respect to the strike, learned counsel submits that the Patna University College Employees' Union went on strike in August 2015 for redressal of long-pending demands, including regularization of daily wage employees. Minutes of meeting dated 08.09.2015 (Annexure-12) and the issues finally agreed upon and approved by the Vice-Chancellor on 09.09.2015 (Annexure-13) clearly record the assurance of no victimization for the strike period. Attendance registers (Annexure-11) demonstrate that several petitioners had marked attendance till mid-August 2015, and petitioner no. 8 had even discharged official duties relating to district sports activities pursuant to official communications dated 17.08.2015 (Annexure-19) and 31.08.2015 (Annexure-20). Hence,

the assertion in the Principal's letter dated 10.09.2015 (Annexure-16) that the petitioners had not reported for duty for over a month is stated to be patently false.

9. Learned counsel submits that despite submission of joining reports on 11.09.2015 (Annexure-14), the petitioners were deliberately prevented from signing the attendance register and were thereafter coerced to hand over charge, keys and records pursuant to letters dated 11.09.2015 (Annexure-17). Ultimately, the impugned office order dated 19.09.2015 (Annexure-18) was issued by the Head Clerk, who is admittedly not the appointing or disciplinary authority, purportedly on telephonic instructions of the Vice-Chancellor, without any written order, enquiry or opportunity of hearing, thereby rendering the action wholly without jurisdiction and in gross violation of the principles of natural justice. It is further contended that under Section 11 of the Patna University Act, 1976, the Vice-Chancellor alone is the competent appointing authority, and even the initial engagement of the petitioners was made only after his approval. In absence of any formal order of the Vice-Chancellor, the termination based on alleged telephonic instructions is non-est in the eye of law and incapable of judicial scrutiny.

10. Learned counsel also submits that the impugned action violates the principle of ***"last-come-first-go"***, as juniors such as Vishnu Prasad and several other ad-hoc employees in the same college and other constituent colleges of Patna University continue in service, particulars whereof have been pleaded in paragraphs 52 and 53 of the writ petition. The petitioners have further been denied even statutory minimum wages, compelling them to approach the Deputy Labour Commissioner, Patna, where part payments have been made (Annexure-9 Series). It is finally submitted that the petitioners have devoted nearly two decades of their lives to the service of the University, have crossed the age of fresh employment elsewhere, and the impugned termination has deprived them of their sole means of livelihood, rendering the action arbitrary, discriminatory, malafide and unconstitutional.On the aforesaid factual matrix, learned counsel for the petitioners submit that the impugned office order dated 19.09.2015 deserves to be quashed and set aside, and the petitioners are entitled to all consequential reliefs in accordance with law.

11. Learned counsel for the respondent nos. 1 to 3 by way of Counter Affidavit submits that the writ petition is misconceived and is liable to be dismissed, inasmuch as the petitioner does not possess any legally enforceable right either to

continue in service or to claim absorption/regularization. It is submitted that one of the petitioner, namely Smt. Madhwi Jha, was engaged as a Grade-III daily wage employee (Junior Laboratory Assistant) in Magadh Mahila College, Patna University, with effect from 15.12.1995, purely on daily wage basis and without any substantive appointment to a sanctioned post. Such engagement, it is contended, was temporary, ad hoc and dehors the regular recruitment process, conferring no right of continuation or regularization.

12. Learned counsel submits that the State Government of Bihar, in exercise of its policy powers, had earlier fixed 10.05.1986 as the cut-off date for absorption of daily wage employees working in University/College services, vide Department of Human Resource Development Sankalp Memo No. 14/एम 1-44/91-989 dated 10.05.1991, and had further directed the Universities to terminate the services of daily wage employees appointed after the said cut-off date. Since the petitioner was admittedly engaged in the year 1995, i.e., much after the cut-off date, she cannot claim any benefit of absorption under the said policy.

13. It is further submitted that subsequently the State Government of Bihar, vide Department of Human Resource

Development Letter No. 1/1-281/09-2034 dated 07.10.2009, imposed a complete restriction on any type of appointment under any category on any post until completion of the process of rationalization of sanctioned posts. Again, vide Department of Human Resource Development Letter No. 1-225/09-559 dated 04.03.2011, all the Universities of Bihar were restrained from making any appointment under teaching or non-teaching categories until amendments in the Act, formulation of a proper appointment process and constitution of a separate commission for appointments. Learned counsel submits that these restrictions continue to operate and, in the interregnum, the Universities were only authorized to outsource low-end activities from the private sector.

14. Learned counsel further submits that the issue raised by the petitioners is no longer res integra and stands squarely covered by a series of judgments passed by this Hon'ble Court, including orders dated 01.05.2018 in C.W.J.C. No. 4783 of 2017 (Babban Singh & Ors. vs. State of Bihar & Ors.), 10.05.2018 in C.W.J.C. No. 9079 of 2017 (Mahesh Yadav vs. State of Bihar & Ors.) and 22.03.2018 in C.W.J.C. No. 2873 of 2017 (Arun Kumar Jha & Ors. vs. State of Bihar & Ors.), wherein this Hon'ble Court has taken a consistent view with regard to daily wage/ad hoc

engagements made after the cut-off date and the statutory embargo imposed by the State Government. Copies of the aforesaid orders have been brought on record as Annexure-A, A/1 and A/2 (Series).

15. It is submitted that pursuant to the aforesaid judgments, the University administration has received directions from this Hon'ble Court and, in order to maintain uniformity and consistency in decision-making, the University has decided to obtain the opinion of the learned Advocate General, Bihar on the issues involved. Accordingly, the relevant matters, including the instant case, have been placed before the learned Advocate General for his considered opinion, which is still awaited. Learned counsel submits that since the issues involved in the present case are identical in pith and substance to those already decided by this Hon'ble Court, and since the University proposes to take a uniform decision in all such matters after receipt of the opinion of the learned Advocate General, no interference is called for at this stage. It is lastly submitted by the learned Counsel for Respondent No. 1 to 3 that the petitioner, having been engaged purely as a daily wage employee long after the prescribed cut-off date and in the teeth of express governmental restrictions, cannot seek a writ of certiorari against the respondent authorities, and the writ petition, therefore, deserves to be dismissed.

16. Learned counsel for the respondent no. 4 submits that the writ petition is devoid of merit and the petitioners are not entitled to any relief as claimed. It is submitted that one of the petitioner, Smt. Madhwi Jha, was engaged in Magadh Mahila College, Patna University, as a Grade-III daily wage employee (Junior Laboratory Assistant) with effect from 15.12.1995, purely on daily wage basis, without any substantive or regular appointment and without creation or filling up of a regular post in accordance with law.

17. Learned counsel submits that the engagement of the petitioners were subject to the policy decisions of the State Government governing daily wage employees in Universities and colleges. It is pointed out that the State Government of Bihar, vide Department of Human Resource Development Sankalp Memo No. 14/A-1-44/91-989 dated 10.05.1991, had fixed 10.05.1986 as the cut-off date for absorption of daily wage employees working in University/College services and had further directed termination of services of daily wage employees appointed after the said cut-off date. Since the petitioner was engaged in the year 1995, much after the prescribed cut-off date, she cannot claim any right of absorption or continuation.

18. It is further submitted that the State Government of Bihar, vide Department of Human Resource Development Letter No. 14/1-281/09-2034 dated 07.10.2009, imposed a complete restriction on any type of appointment under any category on any post until the rationalization of sanctioned posts was completed. Subsequently, vide Department Letter No. 1-225/09-559 dated 04.03.2011, all Universities in the State of Bihar were again restrained from making any appointment under teaching and non-teaching categories until amendment of the Act, formulation of a lawful appointment process and constitution of a separate appointment commission. During the said period, the Universities were only permitted to outsource low-end activities through private agencies, and the said policy continues to remain in force.

19. Learned counsel further submits that the Vice-Chancellor, Patna University, issued directions not to engage the petitioners and other similarly situated daily wage workers, as they had admittedly not reported for duty for a continuous period of about one month, i.e., from 10.08.2015 to 09.09.2015. It is contended that daily wage workers are engaged and paid only for the days they actually work, and they do not possess any vested right to continue in service or to seek re-engagement. Details of daily wage engagement have been brought on record as Annexure-

R/4A. It is further submitted that in compliance of the directions of the Vice-Chancellor, Magadh Mahila College issued a letter dated 10.09.2015, stating that the engagement of the petitioner and other such daily wage employees was no longer required by the College. The services of the petitioner were thus discontinued as she had not been reporting for duty and her services were no longer required.

20. Learned counsel also submits that during the pendency of the writ applicaton CWJC No. 6125 of 2015 (filed for regualarisation), the petitioners were removed from daily wage engagement pursuant to directions issued by the State Government, and therefore no subsisting employer-employee relationship exists between the petitioner and the respondent institution. The petitioners, being daily wagers, have no legal or constitutional right either to the post or to re-engagement, and the action taken by the respondent no. 4 is strictly in accordance with the directions of the competent authorities and the prevailing government policy. The writ petition, therefore, deserves to be dismissed.

ISSUES IN QUESTION:

I. Whether the present writ petition under Article 226 of the Constitution of India is maintainable, in view of the

availability of an efficacious alternative statutory remedy to the petitioners under the provisions of the Industrial Disputes Act, 1947, for redressal of her grievance relating to termination/disengagement from service?

II. Whether the impugned order contained in office order dated 19.09.2015 is stigmatic/ punitive in nature? If yes, then whether the same has been passed after following due process of law?

III. If the impugned order contained in office order dated 19/09/2015 is not stigmatic and is in fact a termination simpliciter, then whether the same qualifies as “retrenchment” within the meaning as defined in Section 2 (oo) of the Industrial Dispute Act, 1947? If yes, then whether it has been passed in compliance with the provisions of Section 25F of the Industrial Dispute Act? If not, then whether the impugned order passed is illegal and void ab initio?

IV. If the impugned order contained in Office Order dated 19/09/2015 amounts to retrenchment, then whether principle of “last-come-first-go” has been followed while effecting the same which is enshrined in Section 25G of the Industrial Dispute Act 1947? If not, whether the said order can be sustained in law?

V. Whether the reliance placed by the respondents on State Government policy decisions, including embargo on appointments and outsourcing policy, can legally sustain the impugned action, when the petitioner's disengagement is not shown to be a consequence of abolition of post or outsourcing?

FINDINGS:

ISSUE I: ***Whether the present writ petition under Article 226 of the Constitution of India is maintainable, in view of the availability of an efficacious alternative statutory remedy to the petitioners under the provisions of the Industrial Disputes Act, 1947, for redressal of her grievance relating to termination/disengagement from service?***

21. The objection as to the maintainability of the writ petition on the ground of availability of an alternative statutory remedy is no longer res integra. The law in this regard has been authoritatively reiterated by the Hon'ble Supreme Court in ***M/s Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority & Ors.*** (Civil Appeal No. 5393 of 2010) wherein the Court clarified the scope and contours of the rule of alternative remedy, relevant paragraphs of which are reiterated herein:

"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed

restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ

remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (State of Uttar Pradesh vs. Mohd. Nooh) had the occasion to observe as follows:

> *"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and*

adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

6. *At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1* ***(Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others)*** *carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:*

(i) where the writ petition seeks enforcement of any of the fundamental rights:

(ii) where there is violation of principles of natural justice:

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited) has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court

found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."

[Emphasis Supplied]

22. In the said decision, the Hon'ble Supreme Court held that the rule requiring exhaustion of an alternative statutory remedy is a rule of discretion and self-restraint, and not a rule that ousts the jurisdiction of the High Court under Article 226. The existence of an alternative remedy does not operate as an absolute bar to the exercise of writ jurisdiction, particularly where the impugned action suffers from lack of jurisdiction, violation of principles of natural justice, arbitrariness, or infringement of fundamental rights.

23. The Court further observed that when the challenge is to the legality of the action itself, and not merely to the correctness of the decision on facts, the High Court would be justified in entertaining the writ petition notwithstanding the

availability of an alternative forum. It was emphasized that the High Court's constitutional power cannot be curtailed by statutory remedies, especially where the grievance goes to the root of the decision making. Applying the aforesaid principle to the present case, the challenge raised by the petitioner is not confined to a mere dispute relating to conditions of service. The grievance pertains to the legality and validity of the termination/disengagement itself, which is alleged to be arbitrary, discriminatory, violative of principles of natural justice, and issued without authority of law. Such allegations strike at the very foundation of the impugned action and raise issues of public law character, thereby attracting the writ jurisdiction of this Court.

24. Moreover, the availability of a remedy under the Industrial Disputes Act, 1947, cannot be said to be an equally efficacious remedy in the facts of the present case, where the petitioner seeks judicial review of administrative action on constitutional and legal grounds. In such circumstances, relegating the petitioner to an alternative forum would amount to denial of effective and immediate relief.

25. In view of the law laid down in ***M/s Godrej Sara Lee Ltd.*****,** (supra) this Court is of the considered opinion that the writ petition cannot be dismissed solely on the ground of

availability of an alternative remedy under the Industrial Disputes Act, 1947. Consequently, the writ petition is maintainable, and the objection raised by the respondents in this regard stands rejected.

ISSUE II: ***Whether the impugned order contained in office order dated 19.09.2015 is stigmatic/ punitive in nature? If yes, then whether the same has been passed after following due process of law?***

26. It is not in dispute that the alleged absence of the petitioners from duty during the period 10.08.2015 to 09.09.2015 has been attributed by the respondents to their participation in a strike. The record further reveals that the said strike culminated in a settlement dated 08.09.2015, which was duly approved by the Vice-Chancellor on 09.09.2015. A material term of the said settlement was that no adverse or punitive action would be taken against the employees for participation in the strike.

27. Once such a settlement stood approved by the competent authority, the respondents were estopped in law from initiating or continuing any adverse action founded upon the very conduct which stood condoned by the settlement. Any termination based on participation in the strike period, notwithstanding the settlement, is therefore contrary to the binding understanding between the parties and suffers from manifest arbitrariness.

28. Even otherwise, participation in a strike, by itself, cannot automatically justify termination of service, particularly in the absence of any finding of illegality of the strike or misconduct attributable to the petitioners. If the respondents intended to treat the alleged absence as misconduct or abandonment of service, the same could not have been presumed unilaterally. A proper domestic enquiry should have been held giving opportunity to the petitioners to defend themselves.

29. From the bare perusal of Annexure 18, dated 10.09.2015, it is apparent that the said order is a stigmatic order. The entire order is reproduced herein below for needful:-

"कार्यालय आदेश

निम्नलिखित दैनिक कामगार जो दिनांक 10 अगस्त, 2015 से 09 सितम्बर, 2015 तक कर्मचारी संघ के हड़ताल में शामिल थे, को पुनः सूचित किया जाता है कि माननीय कुलपति के दूरभाष प्राप्त के निर्देशानुसार आप सभी कामगारों को उक्त अवधि में हड़ताल में रहने के कारण कार्य मुक्त करने के आदेश दिया गया है साथ में यह भी निर्देश दिया गया कि आपलोगों की आवश्यकता महाविद्यालय में नहीं है।

1. श्रीमती माधवी झा
2. श्रीमती मिताली मित्रा
3. श्रीमती ज्योति रंजन
4. श्री राजकुमार
5. श्रीमती शीला देवी

6. श्रीमती तारा देवी

7. श्री किशोर झा

8. श्री मुन्ना रजक

1. श्रीमती माधवी झा आपको आदेश दिया जाता है कि अपने केबिन का चाभी एवं छात्रवृत्ति सम्बन्धित सभी कागजात आलमीरा के साथ श्री सतीश प्रसाद सिन्हा को 21.09.2015 तक अवश्य दे दें।

2. श्रीमती ज्योति रंजन आपको आदेश दिया जाता है कि अपने कार्य से सम्बन्धित सभी कागजात आलमीरा के साथ श्रीमती सुशीला देबी को 21.09.2015 तक अवश्य दे दें।

प्राचार्य के आदेशानुसार"

[Emphasis Supplied]

30. From the reading of the above quoted order, it is clear that on the telephonic instructions issued by the Vice-Chancellor of the University, the petitioners have been removed from service for having participated in strike called by the employees union. Any employee whether daily wager or casual employee or permanent employee, if he is removed for having participated in strike, it tantamounts to alleging misconduct against the employee which necessarily requires that the employee should have been visited with show cause followed by charge-sheet and proper domestic enquiry. No such procedure has been carried out in the present case which emerges as an admitted position. In such view of the matter, Annexure-18 dated 10.09.2015 being stigmatic

order not preceded by issuance of show cause or charge-sheet or holding of enquiry becomes totally illegal. Such an allegation necessarily required a proper enquiry and adherence to the principles of natural justice. The impugned termination, having been effected without issuance of any charge sheet, without affording an opportunity of hearing, and without any enquiry, is thus procedurally infirm. Furthermore, the action of the respondents in terminating the petitioners immediately after the settlement, while relying on the strike period as the sole basis, renders the decision punitive in substance, though clothed as a disengagement of a daily wager. Such an approach is impermissible in law.

31. Accordingly, this Court holds that the impugned termination, being founded on the petitioners alleged non-reporting of duty during the strike period, stands vitiated in view of the settlement dated 08.09.2015 approved on 09.09.2015, and is otherwise unsustainable for want of procedural fairness and legal justification.

ISSUE III: ***If the impugned order contained in office order dated 19/09/2015 is not stigmatic and is in fact a termination simpliciter, then whether the same qualifies as "retrenchment" within the meaning as defined in Section 2 (oo)***

of the Industrial Dispute Act, 1947? If yes, then whether it has been passed in compliance with the provisions of Section 25F of the Industrial Dispute Act? If not, then whether the impugned order passed is illegal and void ab initio?

32. Even if the impugned office order dated 19.09.2015 is assumed to be a termination simpliciter and not stigmatic in nature, the legal consequence of such termination must still be tested on the touchstone of the provisions of the Industrial Disputes Act, 1947.

33. The expression “retrenchment” as defined under Section 2(oo) of the Industrial Disputes Act, 1947, encompasses termination of service of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, save and except the categories specifically excluded therein. It is well settled that termination of a daily wage employee, falls within the ambit of retrenchment unless it squarely falls within the statutory exceptions.

34. None of the exceptions to Secion 2(oo) of the Industrial Dispute Act are attracted in the facts of the present case. Therefore, if the action is held to be retrenchment, strict compliance with the mandatory conditions prescribed under Section 25-F of the Industrial Disputes Act becomes a condition

precedent to the validity of such action. The said provision obligates the employer to, inter alia, give one month's notice or wages in lieu thereof and to pay retrenchment compensation at the time of termination. Non-compliance with Section 25-F renders the retrenchment void ab initio and legally unsustainable. In the present case, it is not the stand of the respondents that any notice pay or retrenchment compensation was paid to the petitioners at the time of issuance of the office order dated 19.09.2015. The impugned order is thus in clear violation of the mandatory statutory safeguards.

35. Further, the assertion that the disengagement was effected on the basis of alleged telephonic instructions, without any formal written order of the competent authority, only reinforces the illegality of the action. Termination of service, particularly one having civil consequences, must emanate from a competent authority through a lawful and reasoned order. An oral or telephonic instruction has no legal sanctity and cannot cure the statutory mandate imposed by Section 25-F. Accordingly, even assuming that the impugned order is a termination simpliciter and non-stigmatic, the same amounts to retrenchment under Section 2(oo) of the Industrial Disputes Act, 1947, and having been effected without complying with Section

25-F, the impugned termination is illegal, void ab initio, and unsustainable in the eye of law.

ISSUE IV: ***If the impugned order contained in Office Order dated 19/09/2015 amounts to retrenchment, then whether principle of "last-come-first-go" has been followed while effecting the same which is enshrined in Section 25G of the Industrial Dispute Act 1947? If not, whether the said order can be sustained in law?***

36. Once it is held that the impugned office order dated **19.09.2015** amounts to *retrenchment* within the meaning of the Industrial Disputes Act, 1947, the action of the respondents is required to strictly conform not only to Section 25-F but also to **Section 25-G of the said Act**, which embodies the statutory principle of *"last-come-first-go"*.

37. The principle of "last-come-first-go" is an integral facet of fair labour practice and has consistently been applied to cases involving retrenchment or disengagement of daily wage, ad hoc, or temporary employees. The underlying rationale of the principle is to ensure that senior employees are not arbitrarily singled out for termination while juniors are retained, unless cogent and demonstrable reasons exist to justify such deviation.

38. In the present case, the petitioners have specifically pleaded and brought on record that they were engaged as a Grade-III & IV daily wage employees with effect from 15.12.1995 and had been continuously working for nearly two decades. In the present case, the material on record does not disclose that the respondents prepared or relied upon any seniority list of daily wage employees in the relevant category before effecting the impugned retrenchment. It is also not the case of the respondents that the petitioners were the junior-most employee in the cadre. It is further asserted by the petitioner that several similarly situated daily wage employees, appointed much after their engagement, have been allowed to continue in service even after the impugned disengagement dated 19.09.2015.

39. The petitioners have categorically named [names as pleaded by the petitioner in para 53 of the writ application are Vishnu Prasad, Madan Kumar (Typist), Binod Prasad (Driver), Vijay Kumar Singh (Peon), Akhilesh Kumar (Peon). Rita Devi (Routine Clerk)], who were appointed subsequent to the petitioners and were working in comparable capacities under the same University administration. The fact that these persons continued in service finds support from the pleadings and has not

been effectively controverted by the respondents by placing any seniority list or objective criteria on record.

40. Notably, the respondents have failed to explain as to why the petitioners only were discontinued while the aforesaid similarly situated daily wage employees were retained. There is no assertion that the petitioners were junior-most, nor is there any material to suggest that her disengagement was necessitated due to abolition of post, lack of work, or administrative exigency. The absence of any such justification renders the action ex facie arbitrary.

41. The selective discontinuation of the petitioners, despite their long-standing service, clearly demonstrates a departure from the principle of ***"last-come-first-go"***. Such departure, in the absence of rational and recorded reasons, amounts to hostile discrimination. The action of the respondents thus fails the test of reasonableness and non-arbitrariness, which is the cornerstone of Article 14 of the Constitution of India. Further, by treating the petitioners unequally vis-à-vis other similarly placed employees in matters relating to public employment, the respondents have also infringed Article 16 of the Constitution of India.

42. It is trite that even daily wage employees are entitled to protection against arbitrary State action and they are certainly entitled to equal treatment and fairness in disengagement. The impugned action, viewed in light of the continued engagement of juniors and similarly situated persons, therefore cannot be sustained. Further, the respondents have not placed on record any reasons, much less recorded reasons, justifying departure from the statutory norm of *last-come-first-go*. In the absence of such recorded justification, the selective retrenchment of the petitioner, while retaining juniors, is in direct contravention of Section 25-G of the Industrial Disputes Act. It is well settled that compliance with Section 25-G is not an empty formality but a substantive safeguard intended to prevent arbitrary and discriminatory retrenchment. Any retrenchment effected in violation of the said provision is rendered legally unsustainable.

43. Accordingly, this Court holds that the discontinuation of the petitioners, in disregard of the principle of last-come-first-go, while retaining similarly situated and junior daily wage employees , is arbitrary, discriminatory, and violative of Articles 14 and 16 of the Constitution of India.

ISSUE V: ***Whether the reliance placed by the respondents on State Government policy decisions, including***

embargo on appointments and outsourcing policy, can legally sustain the impugned action, when the petitioner's disengagement is not shown to be a consequence of abolition of post or outsourcing?

44. The reliance placed by the respondents on State Government policy decisions imposing an embargo on appointments and permitting outsourcing of certain categories of work does not, by itself, confer legal sanctity upon the impugned action, unless a clear and direct nexus is established between such policy decisions and the disengagement of the petitioner.

45. In the present case, the embargo relied upon by the respondents pertains to fresh appointments and rationalization of sanctioned posts, and the outsourcing policy authorizes engagement of private agencies for low-end activities.

46. From the counter affidavit filed on behalf of **Respondent Nos. 1 to 3**, particularly **paragraph 6**, it is evident that the respondents have relied upon the following policy decisions of the State Government:

(i) The letter dated **07.10.2009**, whereby the State Government restricted *fresh appointments* under any category until completion of the rationalisation of sanctioned posts; and

(ii) The subsequent letter dated **04.03.2011**, reiterating restraint on appointments in Universities until statutory amendments and constitution of a separate commission, while permitting outsourcing of low-end activities.

47. A careful reading of the said paragraph shows that the embargo relied upon is expressly confined to **future appointments** and the **process of recruitment**. The said policy does not contemplate, either expressly or by necessary implication, termination or disengagement of existing daily wage employees who were already in service. The respondents have not pleaded that the petitioner's engagement was discontinued as a direct consequence of implementation of the said embargo.

48. Similarly, in the counter affidavit filed on behalf of **Respondent No. 4**, reference is made to directions of the State Government for removal of daily wage workers. However, even therein, there is no assertion that the petitioners' disengagement was preceded by abolition of the post, restructuring of services, or actual outsourcing of the work performed by her. No document has been placed on record to demonstrate that the post held by the petitioners ceased to exist or that their duties were handed over to a private agency pursuant to a formal outsourcing decision.

49. It is settled in law that an embargo on appointments operates prospectively and regulates future engagements; it cannot be pressed into service to retrospectively justify disengagement of an employee who was already working, unless such disengagement is demonstrably linked to abolition of post or lawful reorganisation. In the absence of such linkage, the policy remains a general administrative instruction incapable of sustaining an adverse civil consequence.

50. In the present case, the impugned action is not shown, even in the respondents' own pleadings, to be a consequence of the embargo policy dated 07.10.2009 or 04.03.2011. The reliance on the said embargo, therefore, is misplaced and legally untenable.

51. Accordingly, this Court holds that the respondents' reliance on the State Government's embargo on appointments and outsourcing policy, as pleaded in their counter affidavits, does not legally justify or sustain the impugned disengagement of the petitioners, inasmuch as the same is not shown to be a consequence of abolition of post or actual outsourcing of work.

Re: CWJC No. 6125 of 2015.

Heard the parties.

2. Learned counsel for the petitioners submits that the present writ petition has been instituted seeking issuance of a writ in the nature of mandamus commanding the respondent–University and its authorities to give effect to the decision and recommendations of the Senate Committee for Absorption dated 05.11.2003, and for consequential directions to treat the petitioners as regular employees on the respective sanctioned posts with effect from December, 2003, together with all attendant service benefits.

3. It is contended that the petitioners were engaged between the years 1995 and 1997 on ad-hoc/daily wage basis against duly sanctioned vacant Class-III and Class-IV posts in Magadh Mahila College, a constituent unit of Patna University. Their engagement was made pursuant to an open selection process, after issuance of an advertisement, interview by a duly constituted Selection Committee, and with the approval of the Vice-Chancellor, who is the competent appointing authority under the Patna University Act, 1976. Since their initial engagement, the petitioners have continuously discharged their duties on the respective posts without any complaint and the nature of work performed by them is perennial in character.

4. Learned counsel further submits that despite rendering uninterrupted service for more than a decade, the

petitioners were not regularized and were paid wages even below the statutory minimum. In view of the prolonged engagement of such employees, the Senate of the University constituted a Senate Committee for Absorption, which, after due consideration and in compliance with the reservation roster, submitted its report dated 05.11.2003 recommending regularization/absorption of employees appointed on daily wages against sanctioned vacant posts prior to 31.12.2000. The names of the petitioners admittedly figure in the said recommendation list. It is emphasized that the Vice-Chancellor himself was the Member-cum-Convenor of the said Committee. It is the specific case of the petitioners that the respondent-University has acted in an arbitrary and discriminatory manner by implementing the recommendations of the Committee selectively. Several similarly situated persons, whose names appeared in the very same list dated 05.11.2003, have been regularized from time to time, whereas the petitioners have been unjustly excluded without any valid reason, despite availability of sanctioned vacant posts.

5. Learned counsel also points out that during the pendency of an earlier writ petition, the University issued an advertisement dated 23.03.2005 for regular appointments on the same posts, granting age relaxation and preference to existing

daily wage employees. The petitioners participated in the said selection process; however, the results were never declared and the process was ultimately abandoned, thereby causing further prejudice to the petitioners. It is submitted that the continued denial of regularization is violative of Articles 14 and 16 of the Constitution of India, offends the principles of promissory estoppel and legitimate expectation, and is contrary to the directions of this Court in the earlier round of litigation. The petitioners, having been appointed against sanctioned posts through a fair and transparent process and having rendered long years of service, are entitled to consideration for regularization even within the framework laid down by the Hon'ble Supreme Court in ***State of Karnataka v. Uma Devi***.

6. Learned counsel lastly submits that the petitioners have crossed the age of alternative employment, have spent the prime years of their life in the service of the respondent-University, and are being subjected to hostile discrimination despite repeated representations. In these circumstances, it is urged that this Hon'ble Court may be pleased to issue appropriate writs and directions to secure justice to the petitioners by enforcing the recommendations of the Senate Committee for Absorption dated

05.11.2003 and by granting them regular status with consequential benefits.

7. Learned counsel for the respondents by way of counter affidavit submits at the outset that the claim of the petitioner for regularization is wholly misconceived and untenable in law. It is contended that the policy governing absorption of daily wage employees in the Universities of Bihar has all along been regulated by decisions of the State Government, which are binding upon the respondent–University. It is submitted that the State Government of Bihar, Department of Human Resource Development, had initially fixed the cut-off date for absorption of daily wage employees working in Universities and Colleges as 10.05.1986, vide Sankalp Memo dated 10.05.1991, and had further directed termination of services of daily wage employees appointed thereafter. In compliance thereof, the respondent–University regularized the services of 40 daily wage employees who were appointed prior to the said cut-off date, vide Office Order dated 29.01.2004.

8. Learned counsel further submits that subsequently, the State Government extended the cut-off date for absorption of daily wage employees up to 11.12.1990, vide Sankalp Memo dated 10.05.2015 issued by the Department of Personnel and

Administrative Reforms. On the basis of the said policy decision, 16 more daily wage employees appointed prior to 10.05.1986 were regularized in the service of Patna University vide Office Order dated 04.04.2006. It is asserted that regularization has thus been undertaken strictly in accordance with the policy decisions of the State Government and not in an arbitrary manner.

9. It is further submitted that pursuant to the judgment of this Court in ***Deepak Kumar v. State of Bihar & Ors. passed in CWJC No. 10507 of 1997 and MJC No. 1741 of 2002***, vacancies on various Grade-III and Grade-IV posts were advertised by Patna University in the year 2005. The said advertisement incorporated provisions for relaxation of the upper age limit and preference based on experience in favour of daily wage employees. Written examinations and interviews were duly conducted; however, the result of the said selection process could not be declared due to unavoidable administrative reasons. Learned counsel also places reliance on subsequent directions issued by the State Government, whereby all Universities in Bihar were restrained from making any appointments in teaching and non-teaching categories until completion of the process of rationalization of sanctioned posts, amendment of the relevant statutes, and constitution of a separate appointment commission. It is submitted that the State

Government further authorized outsourcing of low-end activities, and the said policy continues to remain in force, thereby placing a complete embargo on regular appointments and regularization by the Universities.

10. It is further brought to the notice of the Court that, in certain exceptional cases, appointments or regularization were made pursuant to specific directions issued by the Governor's Secretariat or the State Government, as in the case of Dr. Sudhakar Prasad Singh and Shri Shivji Mahto. Learned counsel submits that such appointments were not made as a matter of course, but strictly in compliance with express governmental directions and after due consideration by the competent authorities of the University.

11. With specific reference to the petitioners, learned counsel submits that the petitioner no. 1, namely Madhwi Jha, was engaged as a Grade-III daily wage employee (Junior Laboratory Assistant) with effect from 15.12.1995, which is much beyond the cut-off dates prescribed under the relevant State Government policies. It is further submitted that the petitioner has already challenged her disengagement from daily wage employment by filing a separate writ petition, being CWJC No. 18289 of 2015, which is pending adjudication. On the aforesaid premises, learned

counsel for the respondents submits that the petitioners have no enforceable legal right to claim regularization and that the writ petition, being contrary to the binding policy decisions of the State Government, is liable to be dismissed.

12. ***The principal issue that falls for determination by this Hon'ble Court is: whether the petitioners, having been engaged pursuant to a duly conducted selection process, against sanctioned vacant posts, and having continuously discharged perennial duties for a long and uninterrupted period, are entitled to regularisation/absorption in the service of the respondent–University in terms of the recommendations of the Senate Committee for Absorption dated 05.11.2003, and whether the subsequent reliance placed by the respondents on executive cut-off dates, policy embargoes, and administrative restraints can lawfully defeat the petitioners' accrued and legitimate claim for regularisation, particularly when similarly situated employees have been regularised and the petitioners' engagement satisfies the parameters recognised by law?***

13. The issue framed falls for determination in the backdrop of undisputed facts demonstrating that the petitioners were engaged against duly sanctioned vacant posts, pursuant to a transparent and duly approved selection process, and have

continuously discharged perennial duties for a long and uninterrupted period. Upon a careful consideration of the pleadings, documents on record, and the settled position of law, this Court is of the considered view that the issue deserves to be answered in favour of the petitioners, for the reasons delineated hereinafter.

14. At the outset, it is significant to note that the engagement of the petitioners cannot be characterised as a backdoor entry or an illegal appointment. The materials on record clearly establish that their initial engagement was preceded by issuance of an advertisement, consideration by a duly constituted Selection Committee, and approval of the competent appointing authority, namely the Vice-Chancellor. These facts are not in dispute as they were never denied/disputed by the respondent parties. The petitioners were, thus appointed against sanctioned vacant posts and have continuously worked on those posts since 1995–1997, discharging duties which are admittedly perennial in nature. Their continuation over decades, with the knowledge and acquiescence of the respondent–University, lends further legitimacy to their claim.

15. Equally material is the recommendation of the Senate Committee for Absorption dated 05.11.2003. The said

Committee was constituted by the Senate of the University itself and was chaired by the Vice-Chancellor, who is the competent authority for appointments under the Patna University Act. The Committee, after holding several meetings, scrutinising records, and adhering to the reservation roster, recommended absorption/regularisation of daily wage employees appointed against sanctioned posts prior to the cut-off date, expressly including the petitioners. The recommendations were not tentative or advisory in nature, but were intended to be acted upon, subject only to verification of documents, which exercise was also directed to be completed within a stipulated time. It is further of considerable relevance to note, with specific reference to Annexure–3, that the *Senate Committee for Absorption* had unequivocally fixed **31.12.2000 as the cut-off date** for determining eligibility for absorption/regularisation of daily wage employees appointed against sanctioned vacant posts. The report clearly records that all employees engaged prior to the said cut-off date and continuing in service were found eligible for absorption, subject to verification of records and compliance with the reservation roster. The petitioners, whose dates of initial engagement fall between 1995 and 1997, undisputably satisfy this eligibility criterion, having been appointed well **prior to**

31.12.2000. Their inclusion in the recommendation list appended to Annexure–3 is thus neither incidental nor erroneous, but a conscious determination by a competent statutory committee. Once such a recommendation was made by a competent statutory body, the petitioners acquired a legitimate and enforceable expectation that the same would be implemented in a fair, uniform and non-discriminatory manner.

16. The conduct of the respondent–University, however, demonstrates selective and arbitrary implementation of the said recommendation. It is an admitted position that several similarly situated employees whose names appeared in the very same list dated 05.11.2003 were regularised from time to time, even after issuance of subsequent policy circulars and embargoes. The petitioners alone have been excluded, despite availability of sanctioned posts and despite continuous extraction of work from them. Such pick-and-choose implementation strikes at the very root of Article 14 of the Constitution and renders the action of the respondents manifestly arbitrary.

17. The reliance placed by the respondents on executive cut-off dates, policy embargoes, and subsequent administrative restraints does not advance their case. Executive instructions cannot operate retrospectively so as to defeat accrued rights or

legitimate expectations arising from an earlier valid decision. Once the petitioners were found eligible and recommended for absorption by a competent committee in 2003, the respondent–University could not indefinitely postpone or deny implementation by subsequently invoking policy decisions, particularly when those very policies were not applied uniformly and were relaxed or bypassed in favour of other employees.

18. The law laid down by the Hon'ble Supreme Court in ***State of Karnataka v. Uma Devi*** AIR 2006 SUPREME COURT 1806 has been heavily relied upon by the respondents; however, the said judgment does not bar the petitioners' claim. **Uma Devi (Supra)** itself carves out an exception for cases where employees have been working for a long period against sanctioned posts and were not appointed through a backdoor or in violation of constitutional requirements. Relevant paragraphs are produced herein for perusal:

"44. One aspect needs to be clarified. There may be cases *where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 regularize 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 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."

[Emphasis Supplied]

19. The petitioners squarely fall within this exception. Their engagement was not illegal but, at the highest, irregular, and such irregularity stood cured by long continuation, institutional approval, and express recommendation for absorption. Therefore, Uma Devi cannot be read as an embargo against regularisation in the peculiar facts of the present case.

20. The subsequent decisions of the Hon'ble Supreme Court fortify the petitioners' claim. In ***Dharam Singh v. State of U.P.*** (Civil Appeal No. 8558 of 2018), the Supreme Court held that where employees have worked for long years against sanctioned posts and the employer has taken continuous benefit of their services, denial of regularisation would be unjust and inequitable, especially when similarly situated persons have been granted such benefit. The Court emphasised that constitutional principles of equality and fairness must guide the employer's action. The said inference can be made from the relevant paragraphs reproduced herein:

"10. It must be noted that the premise of "no vacancy" is, in any event, contradicted by the evidence on record. An RTI response of 22.01.2010 received from the office of Respondent No.2 indicated existence of Class-IV vacancies. Furthermore, I.A. No. 109487 of 2020 filed before this Court by the appellants specifically pointed to at least five vacant Class-IV/Guard posts and one vacant Driver post within the establishment. That application also set out the names of similarly situated daily wagers who were regularised earlier within the same Commission. No rebuttal was filed to the I.A. The unrebutted assertion of vacancies and the comparison with those who received

regularisation materially undermine the High Court's conclusion that no vacancy existed and reveal unequal treatment vis-à-vis persons similarly placed. Selective regularisation in the same establishment, while continuing the appellants on daily wages despite comparable tenure and duties with those regularized, is a clear violation of equity."

11. Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non- suit the appellants is misplaced. Unlike Umadevi (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in Jaggo v. Union of India4 and in Shripal & Another v. Nagar Nigam, Ghaziabad5 have emphatically cautioned that Umadevi (Supra) cannot be deployed as a shield to justify exploitation through long-term "ad hocism", the use of

outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from Shripal (supra) have been reproduced hereunder:

"14. The Respondent Employer places reliance on Umadevi (supra)2 to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices."

[Emphasis Supplied]

21. Further, in the **Dharam Singh Case** (Supra). The Hon'ble Apex Court rightly pointed out the nature of ad-hocism

and that it cannot be used as tool to take away the rights of the daily wagers which can be further understood by the paragraphs reproduce herein below:

"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."

[**Emphasis Supplied]**

22. Similarly, in ***Shri Pal & Another v. Nagar Nigam, Ghaziabad*** (2025 SCC Online SC 221), the Supreme Court has taken its stand on this issue, relevant paragraph of which are reproduced herein:

"15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly(2024 INSC 1034) *disfavors perpetual daily-wage or*

contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgement of this court in ***Jaggo v. Union of India****3 in the following paragraphs:*

"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."

[**Emphasis Supplied]**

23. It is, therefore, reiterated that prolonged engagement against sanctioned posts, coupled with a fair selection process and absence of any fault on the part of the employees, creates a strong equitable claim for regularisation. The Court cautioned that public authorities cannot exploit workers for years together and then deny them regular status by taking shelter under technical or policy objections.

24. In ***Jaggo v. Union of India*** (2025 (1) PLJR 165), the Supreme Court underscored that where employees have been allowed to continue for long durations and the employer has derived benefit from their services, the doctrine of fairness and non-arbitrariness obligates the State to consider regularisation, particularly when denial would result in hostile discrimination.

25. Upon an anxious consideration of the rival submissions advanced on behalf of the petitioners and the respondents, the pleadings on record, the documentary evidence placed before this Court, and the findings recorded on the issues framed hereinabove, this Court is of the considered view that the action of the respondent–University in denying regularisation to

the petitioners cannot be sustained in law. The material facts regarding the manner of engagement of the petitioners, their appointment against sanctioned vacant posts through a due process, their continuous and uninterrupted service for a considerable length of time, and their inclusion in the recommendation of the Senate Committee for Absorption dated 05.11.2003, stand admitted or are otherwise duly established. At the same time, the respondents have failed to demonstrate any legally tenable justification for selectively withholding the benefit of regularisation from the petitioners while extending the same to other similarly situated employees from the very same panel.

26. The reliance placed by the respondents on executive cut-off dates, policy embargoes, and subsequent administrative instructions does not outweigh the accrued rights and legitimate expectations of the petitioners, particularly when such policies have not been applied uniformly and have been relaxed or bypassed in comparable cases. The petitioners' engagement does not fall within the category of illegal or backdoor appointments, and their claim is clearly distinguishable from the mischief sought to be addressed in **Uma Devi (Supra).** On the contrary, the petitioners' case falls within the well-recognised exceptions carved out by the Hon'ble Supreme Court and reaffirmed in subsequent

decisions, where long, continuous service against sanctioned posts, coupled with fairness in initial engagement, warrants regularisation in the interest of justice, equity, and constitutional propriety.

27. Applying the aforesaid principles to the present case, it is evident that the petitioners have rendered uninterrupted service for more than a decade; they were engaged against sanctioned posts through a due process; they were found eligible and recommended for absorption by a competent committee; and yet they have been denied regularisation while others similarly situated have been granted the same benefit. Such action is clearly violative of Articles 14 and 16 of the Constitution of India and offends the principles of legitimate expectation, fairness, and non-arbitrariness.

28. Accordingly, this Court holds that the subsequent reliance placed by the respondents on executive cut-off dates, policy embargoes, and administrative restraints cannot lawfully defeat the petitioners' accrued and legitimate claim for regularisation. The petitioners satisfy the parameters recognised by law. The issue is, therefore, answered in favour of the petitioners, holding that they are entitled to regularisation/absorption.

RELIEFS GRANTED:

(A) For the reasons as articulated above, the impugned termination order dated 19-09-2015 is set aside/quashed. All the petitioners shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

(B) The respondent University is directed to reinstate the petitioners to their respective posts, (or to posts involving duties substantially similar to those previously discharged by them), within a period of four weeks from the date of the judgment. The entire period of absence from the date of termination until the date of actual reinstatement shall be treated as continuous service for all purposes, entitling the petitioners to all consequential benefits, including seniority and eligibility for promotion, if any.

(C) Having regard to the totality of facts and circumstances of the case, this Court is of the considered view that while the petitioners' engagement and long, uninterrupted service against sanctioned vacant posts entitles them to regularisation, the relief must be moulded in a manner that balances equity, administrative feasibility, and settled legal principles. It is not in dispute that some of the petitioners approached this Court by filing the present writ application CWJC No. 1080 of 2005 seeking implementation of the recommendations of the Senate Committee

for Absorption dated 05.11.2003 and regularisation of their services. The said writ petition was disposed of on 03/01/2011 without granting substantive relief, in view of the prevailing legal position at the relevant time. The disposal of the earlier writ petition did not amount to adjudication on merits of the petitioners' entitlement to regularisation, nor did it extinguish their substantive claim arising out of long and continuous service against sanctioned posts and their inclusion in the Committee's recommendation. Thereafter, the petitioners continued to serve the respondent–University for several more years, thereby completing a considerable and uninterrupted tenure of service, far exceeding the threshold recognised by law for equitable consideration of regularisation. In these circumstances, the present writ petition filed in the year 2015 constitutes a fresh and matured cause of action. By that point of time, the petitioners had already completed a considerable length of service, extending well beyond a decade, and had thus clearly crossed the threshold recognised by judicial precedents for claiming regularisation. In such circumstances, this Court finds it appropriate to direct that the petitioners be regularised with effect from the date of filing of the present writ petition, i.e., 17/04/2015 as the same would subserve the ends of justice. Granting regularisation from that date would duly

acknowledge the petitioners' long service and legitimate claim, while at the same time avoiding undue financial or administrative burden on the respondent–University arising out of retrospective regularisation from an earlier date. This course strikes a fair balance between the competing submissions of the parties and accords with the principles of equity, fairness, and non-arbitrariness governing the exercise of writ jurisdiction.

29. Accordingly, the petitioners shall be absorbed/ regularized against the respective sanctioned posts on which they were working immediately prior to their termination. Such absorption/regularization shall take effect from 17-04-2015, with entitlement to all consequential monetary and other benefits available to a regular employee.

30. In view of the above, both the writ applications filed by the petitioners are allowed in the aforesaid terms.

31. All pending Interlocutory Application(s) stands disposed of. There shall be no order as to cost.

(Alok Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	10.12.2025.
Uploading Date	23.12.2025.
Transmission Date	N/A