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ORISSA HIGH COURT : CUTTACK

WPC (OAC) No.3584 of 2014

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950
read with
Section 19 of the Administrative Tribunals Act, 1985

* * *

Ananta Charan Bal
Aged about 59 years
Son of Late Giridhari Bal
At/P.O.: Janara Barimula
P.S/District: Kendrapara
At present working as
Watchman
Under the Rural Works Division
Kendrapara

...

Petitioner

-VERSUS-

- 1.** State of Odisha
Represented by
Secretary
Department of Rural Works, Odisha,
New Secretariat Building, Bhubaneswar
District: Khordha
- 2.** Chief Engineer
Rural Works, Odisha
Bhubaneswar
District: Khordha
- 3.** Executive Engineer
Rural Works Division



Kendrapara
At/P.O./District: Kendrapara

4. Secretary
Works Department
Government of Odisha, Bhubaneswar
District: Khordha

5. Superintending Engineer
NH Circle (North), Bhubaneswar
At/P.O.: Bhubaneswar
District: Khordha.

...Opposite parties

Counsel appeared for the parties:

For the Petitioner : M/s. Bipin Kumar Nayak,
Mihir Kanta Rath, Advocates

For the Opposite parties : Mr. Saswat Das,
Additional Government Advocate
along with
Mr. Prem Kumar Mohanty,
Additional Standing Counsel

P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 20.02.2026 :: Date of Judgment : 07.03.2026

JUDGMENT

Aggrieved by Office Order No.4 of 2011-12, dated 25.02.2012 of the Executive Engineer, Rural Works Division, Kendrapara, bringing the petitioner, a Daily Labour Roll ("DLR", for short) employee, brought over to Work-Charged Establishment (Annexure-8) instead of



regularising his service against available vacancies in the Regular Establishment as disclosed in Letter *vide* Memo No.1335, dated 21.03.1998 of the Superintending Engineer, Central Circle, Rural Works, Bhubaneswar (Annexure-9), an Original Application under Section 19 of the Administrative Tribunals Act, 1985, registered as O.A. No.3584 (C) of 2014, was filed before the Odisha Administrative Tribunal, Cuttack Bench, Cuttack beseeching following relief(s):

“In view of the facts stated above in paragraph-6, the applicant prays for the following relief(s):-

- (i) Let the action of the respondent in bring over the applicant to the Work Charged Establishment as per order dated 25.02.2012 under Annexure-8 instead of regularizing the services of the applicant in terms of Annexure-9 and the regularization of similarly situated DLRs working in different Division of Works Department in the facts and circumstances of the case be declared as illegal.*
- (ii) Let the respondents be directed to regularize the services of the applicant in terms of Annexure-9 and similar orders passed by different Divisions coming under works Department i.e. from the year 1998 within a stipulated time.*
- (iii) Let the respondents be directed to extend all service and financial benefits on such regularization of the applicant from the year 1998 till his retirement within a stipulated time.*



(iv) Let any other order/orders be passed as deem fit and proper.”

1.1. After abolition of the Odisha Administrative Tribunal by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No.A-11014/10/2015-AT [G.S.R.552(E).], dated 2nd August, 2019), the said case having been transferred to this Court, O.A. No.3584(C) of 2014 has been re-registered as WPC(OAC) No.3584 of 2014.

Facts:

2. From the adumbrated facts on record, it can be culled out that the petitioner, engaged as DLR employee under the category “Unskilled Watchman” in the Office of the Executive Engineer, Expressway Division, Kendrapara (Now R&B Division No.II) on 14.05.1984, being transferred to the Rural Works Division, Kendrapara, joined on 31.10.1991.

2.1. The grievance of the petitioner is that without reckoning his service rendered to the employer since 14.05.1984, although the petitioner seamlessly continued to serve the Rural Works Department, Government of Odisha despite his transfer in the year 1991, he has not been accorded benefit in service. Pursuant to the orders dated 28.07.1998 and 18.05.2000 of the Works Department,



similarly situated persons who joined as DLR Employees, have been regularized in their services.

- 2.2. By Letter bearing No.RWSE-III-26/09-14911/RD, dated 23.02.2009 issued by the Government of Odisha in Rural Development Department, 1565 numbers of NMR/DLR employees working under the Rural Works Organisation and 1805 numbers of NMR/DLR employees working under the RWS&S Organization being engaged prior to 13.04.1993 were brought over to the Work-Charged Establishment in terms of instructions of the Odisha Work-Charged Employees (Appointment and Condition of Service) Instruction, 1974.
- 2.3. Though the name of the petitioner appeared at Sl. No.1 under the heading of “Watchman (Unskilled)” in the Detailed Seniority List of NMR/DLR employees working under the Rural Works Division, Kendrapara (Annexure-4), against the column “Date of Engagement”, it is reflected as “Since 1984”. The petitioner supplied information to the Authority concerned showing his date of engagement as “14.05.1984”.
- 2.4. Despite such step being taken, the authority concerned having not carried out necessary correction in the seniority list, the employees engaged latter to the petitioner have been accorded benefit of regularization in



service. Flagging such issue, the petitioner approached the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack by way of an Original Application, bearing O.A. No.814(C) of 2011, under Section 19 of the Administrative Tribunals Act, 1985, which came to be disposed of on 23.03.2011 with a direction to the Chief Engineer and Executive Engineer, Rural Works Division, Kendrapara to consider the Original Application as representation and pass appropriate orders thereon.

2.5. In compliance to the aforesaid order, the Executive Engineer, Rural Works Division, Kendrapara issued Office Order No.4 of 2011-2012, dated 25.02.2012 reckoning the engagement of the petitioner prior to 12.04.1993, which reads as thus:

*“Government of Odisha
Office of the Executive Engineer
Rural Works Division, Kendrapara*

Office Order No.4 of 2011-12

In pursuance of Letter No.3226 dt.24.02.2012 of Chief Engineer, Rural Works-I (O) Bhubaneswar received along with approved list of the following identified DLR workers who are engaged prior to 12.04.1993 are hereby provisionally brought over to the Work-Charged Establishment in the post/scale of pay/category etc. as indicated against them from the date of their joining.

The Service condition will be regulated as per provision laid down in Odisha Work-Charged Employees



(Appointment and Condition of Service) Instruction, 1974 and amendments made thereon.

The appointment is purely temporary and subject to fulfilment of the condition of the appointment attached here with.

No TTA will be allowed for the purpose of joining in place of posting.

<i>Sl. No</i>	<i>Name of the Identified DLRs</i>	<i>Date of Birth</i>	<i>Category</i>	<i>Post in which appointed/Pay Scale</i>	<i>Office where in posted</i>
1.	<i>Sri Hrusikesh Parida</i>	<i>24.04.1971</i>	<i>Mate</i>	<i>0440-14680GP-1300</i>	<i>RW Sub-Division, Marsaghai</i>
2.	<i>Sri Ananta Charan Bal</i>	<i>05.02.1955</i>	<i>Watch Man</i>	<i>4440-14680 GP-1300</i>	<i>R W Sub-Division, Kendrapara</i>

*Sd/- D.P. Dash
Executive Engineer
RW Division, Kendrapara”*

2.6. While the petitioner was continuing in the Expressway Division, Kendrapara, he was transferred to the Rural Works Division, Kendrapara with effect from 31.10.1991. Since the similarly situated persons were allowed to continue in the Expressway Division, Kendrapara as well as other Divisions coming under the Works Department, they have been regularized pursuant to Letters dated 28.07.1998 and 18.05.2000 issued by the Government in the Works Department. The Superintending Engineer, Rural Works, Central Circle *vide* his communication addressed to opposite party No.2 dated 21.03.1998 submitted the list of eligible DLR employees for their



absorption in Class-IV (Group-D) posts in the Rural Works Division, Kendrapara.

2.7. The petitioner is aggrieved by Office Order dated 25.02.2012 issued by the Executive Engineer, R.W. Division, Kendrapara, whereby his service was brought over to the Work-Charged Establishment in the post of Watchman, even though it transpires from Letter *vide* Memo No.1335 dated 21.03.1998 of the Superintending Engineer, Central Circle, Rural Works, Bhubaneswar (Annexure-9) that five numbers of Sweeper-cum-Night Watchman posts were lying vacant under the Rural Works Division, Kendrapara. It is alleged by the petitioner that instead of regularising his service against the vacant post, he could not have been brought over to Work-Charged Establishment even though it is admitted position that he has been engaged and working prior to 13.04.1993.

Submissions of counsel for the petitioner:

3. With the aforesaid background facts, Sri Mihir Kanta Rath, learned Advocate for the petitioner submitted that since the similarly situated DLR employees were brought under the Regular Establishment in different divisions of the Rural Works Department, merely because the petitioner was transferred to other Division in the year 1991, he should not have been ignored from being



brought over to the Regular Establishment as his counterparts have been allowed to enjoy the benefit of being retained.

- 3.1. It is submitted that the petitioner by virtue of Officer Order *vide* Memo No.216, dated 18.02.2015 got retired from Government service with effect from 28.02.2015 (Afternoon) on attaining the age of superannuation as Worked-Charged employee of Rural Works Division, Kendrapara.
- 3.2. The petitioner seeks issue of writ of *mandamus* to the Authority concerned to bring him over to the Regular Establishment prior to his retirement, as was done in the case of similarly circumstanced employees, so that he can be extended with the retiral benefits.
- 3.3. Sri Mihir Kanta Rath, learned counsel for the petitioner placed heavy reliance on the Judgment dated 02.09.2022 rendered by this Court in the case of *Debendranath Sahoo Vrs. State of Odisha and others*, WPC(OA) No.1791 of 2017, reported at (2022) III ILR-CUT 282.
4. Sri Saswat Das, learned Additional Government Advocate along with Sri Prem Kumar Mohanty, learned Additional Standing Counsel referring to paragraph-7 of the counter affidavit filed by the opposite parties, submitted that the initial date of engagement of the



petitioner has been accepted by the Authority (Executive Engineer, Rural Works Division, Kendrapara) as “01.07.1984” which was also accepted by the Government (Opposite party No.1). On the basis of such date of engagement, the service of the petitioner was brought over to the Work-Charged Establishment with effect from 25.02.2012 in order to comply with Order dated 21.03.2011 passed by the learned Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.814(C) of 2011.

- 4.1. Referring to paragraph-8 of the counter affidavit, it is submitted that as per the Policy decision of the Government and upon issuance of Resolution by the Finance Department on 15.05.1997, the opposite parties to carry out the instructions, started to take stock of NMR and DLR employees working under them. Since there was ban order restricting engagement with effect from 12.04.1993, it became necessary to ascertain the exact date of engagement of each NMR/DLR employees. Verification of records were conducted in different offices to ascertain the actual date of engagement. Ascertaining the actual date of engagement in order to determine the *inter se* seniority, it consumed substantial period. Ultimately, the list of identified DLR and NMR employees was prepared and sent to the Government for obtaining necessary concurrence and approval from the Finance



Department. In phased manner, the services of the identified NMR and DLR employees were brought over to the Work-Charged Establishment being regulated under the Odisha Work Charged Employee (Appointment and Condition of Service) Instruction, 1974 as amended from time to time.

4.2. Relying on the date of transfer of the petitioner to be placed under the control of Executive Engineer, Rural Works Division, Kendrapara, the aforesaid date of engagement has been accepted and service benefits as admissible has been extended to the petitioner at par with the DLR employees who were brought over to the Work-Charged Establishment. The petitioner has not put forth any singular instance to buttress his contention that the employees joined as DLR prior to 12.04.1993 and subsequent to 01.07.1984 have been granted the relief as claimed by the petitioner in this writ petition. Therefore, the learned Additional Government Advocate fervently prayed to reject the claim of the petitioner.

4.3. The learned Additional Standing Counsel placed reliance on Annexure-A/3 which reveals as follows:

*“Office of the Executive Engineer
Rural Works Division, Kendrapara
No.5521/dt. 19.7.2011*

To



*The Chief Engineer
Rural Works-I(O),
Bhubaneswar*

*Sub.: Regularization of Identified DLR in Work-Charged
Establishment engaged prior to 12.04.1993.*

Ref.: Your Letter No.5204, dated 05.04.2011.

Sir,

In inviting a kind reference to the above noted subject, I am to state that Sri Ananta Charan Bal (D L R Watch Man) has been engaged prior to 12.4.1993 i.e. during 1984 as reported by Assistant Engineer R.W. Sub-Division Aul. In absence of exact date and month of joining as D L R may be treated as 1.07.1984 in line with fixation of assumed date of birth when year of birth is declared.

His seniority may please be fixed accordingly and he may please be regularized in Work Charged Establishment.

This is for favour of your kind information and necessary action.”

4.4. It is, therefore, submitted that as no evidence is available to ascertain the actual date of engagement as claimed by the petitioner, the authority has accepted the date of engagement as “01.07.1984” and accordingly, the petitioner before his superannuation was brought over to the Work-Charged Establishment.



4.5. Hence the learned Additional Government Advocate/ Additional Standing Counsel would submit that no necessity arises in the present nature of case to show indulgence.

Analysis and discussions:

5. Having glanced at the pleadings, the undisputed facts emanated from material on record that the petitioner joined as DLR Watchman prior to 12.04.1993 and the date of engagement has been taken as “01.07.1984”. The Executive Engineer, Rural Works Division, Kendrapara *vide* Letter No.5521 dated 19.07.2011 (Annexure-A/3) enclosed to the counter affidavit, reflected said date as date of engagement which remained unrebutted, though the petitioner claimed the said date to be treated as “14.05.1984” in the petition.

5.1. As is revealed from the records that the petitioner while working as Unskilled Watchman in the Work-Charged Establishment, got retired with effect from 28.02.2015 on attaining the age of superannuation, thereby the fact that he offered more than thirty years of continuous service is not denied by the opposite parties.

6. During the course of hearing, the learned counsel for the petitioner highlighted that had the petitioner been brought over to the Regular Establishment considering the length of service rendered in the Department as DLR



employee, he could be extended the pensionary benefits. This Court considered such plight in very many earlier occasions with respect to similarly circumstanced persons.

6.1. Learned counsel for the petitioner referring to coordinate Bench Judgment dated 17.12.2021 rendered in the case of *Sadananda Setha Vrs. State of Odisha & others*, WPC(OAC) No.865 of 2018, reported in 2021 SCC OnLine Ori 2111 to countenance his submission that in identical factual matrix, this Court allowed the relief(s) akin to that is claimed in the present case. This Court recorded the following fact and conclusion in *Sadananda Setha (supra)*:

“3. *The factual matrix, in brief, is that the Petitioner had joined as ‘Khalalsi’ on 1st March, 1989 under the provision of Rehabilitation Assistance Scheme (in short ‘R.A.S.’) under work charged establishment instead of regular establishment. In course of his employment, the Petitioner had submitted several representations to the authorities to bring him over to the regular establishment but the grievance of the Petitioner remained unheard by the authorities till the date of his retirement on 30th June, 2016. The Petitioner has, therefore, stated that it is due to the sheer negligence and laches on the part of the authorities he was not given appointment in regular establishment. Since at the time of retirement, the service of the Petitioner was not regularized, he has been denied pensionary and other retiral benefits by*



his employer, which is illegal, arbitrary and discriminatory.

9. *The counter affidavit filed on behalf of the Opposite Parties states that DOWR Resolution dated 7th September, 1995 wherein it has been stipulated that employees completing ten years in work charged establishment are eligible to be brought over to the regular establishment. ...*

14. *The Petitioner's case is that although he was appointed as R.A.S. on 1st March, 1989 i.e. much prior to the cut off date fixed by the Hon'ble Supreme Court of India i.e. 13th April, 1993, the Petitioner should have been brought over to the regular establishment before his retirement from service. The State Government counter does not reveal as to whether any scheme pursuant to the Hon'ble Supreme Court of India's direction was ever prepared or not and if such a scheme was prepared whether the list was prepared on the basis of seniority of the work charged employees. In the absence of any such information, this Court is constrained to accept the fact that the State Government has not acted in a manner as directed by the Hon'ble Supreme Court of India concerning the work charged employees. Moreover, the Petitioner was exploited by a model employer like the State for several decades as a work charged employee without giving him the service benefits of the regular establishment.*



15. *Moreover, even accepting the argument for Opposite Parties that the DOWR resolution dated 7th September, 1995 provides that on completion of ten years of service in work charged establishment, the work charged is eligible to be brought over to regular establishment. In the present case, the Petitioner joined as 'Khalalsi' on 1st March, 1989. It is not known as to what prevented the authorities to bring the Petitioner to regular establishment for such a long time as such the same has caused injustice to the Petitioner in the present case.*
16. *Since the Petitioner has retired from service on attaining age of superannuation, the question of his regularization against the regular post does not arise for consideration in the present writ petition. It is a case of pensionary benefits payable to the Petitioner i.e. required to be considered in the present writ petition. Since the benefits have been granted to other similarly placed work charged employees by notionally considering them as regular establishment employee and as such the pensionary benefits have been given to them, the same benefit needs to be extended to the Petitioner for services rendered by him under the State Government for several decades continuously that too on payment of a paltry amount every month. The whole objective of the pension scheme is to support an employee and his family after retirement which is in recognition of his relentless service to the Govt. and such benefits are provided under the Rules on humanitarian considerations.”*

6.2. In an identical case where the NMR employees were brought over to the Work-Charged Establishment, this



Court in the *Judgment dated 07.04.2022* rendered in *Ramesh Chandra Biswal & Others Vrs. State of Odisha & Others*, WPC (OAC) No. 1067 of 2018 analysed the applicability of the Finance Department Resolution dated 15.05.1997 and held:

“13. *Having examined the aforesaid resolution, this Court finds that nowhere it mandates that the NMR/DLR/ Job Contract workers are to be first brought over to the Work-Charged establishment before regularization of their services. Such being the position, it is not understood nor adequately clarified by the opposite parties as to on what basis the petitioners were brought over to the work-charged establishment in the year 2009, which is after the judgment passed in State of Karnataka and others Vrs. Umadevi and others, AIR 2006 SC 1806, even though they had put in nearly three decades of uninterrupted service and were, therefore, otherwise eligible to be considered for absorption in the regular establishment as per the ratio of Umadevi and even as per the resolution dated 15.05.1997. Reference has been made to the Resolution No.21828 dated 07.09.1995 of the Government in Water Resources Department, enclosed as Annexure-C to the counter, which provides for regularization of services of NMR and Work-Charged employees but then, after coming into force of the Finance Department Resolution dated 15.05.1997, the same stood automatically superseded. Therefore, reliance placed on the said resolution to justify the action of the authorities in bringing over the petitioners to the Work-Charged*



Establishment in the year 2009 is entirely fallacious and untenable.

14. *The Opposite Parties have also referred to the Instructions 1974 to contend that the petitioners having accepted and acquiesced to being brought over to the work-charged establishment without any challenge to their service conditions as provided in the said instruction, cannot now seek a relief de hors the provisions in Instructions 1974. This is a fallacious argument inasmuch as when the Constitution Bench of the highest Court of the land has placed a definite obligation on the Government (in Umadevi) to act in a particular manner in respect of such category of employees and it has not done so, how can it turn around to question the so-called conduct of the employees by raising the plea of acceptance and acquiescence? To reiterate, the Apex Court in Umadevi as explained in State of Karnataka Vrs. M.L. Kesari & Ors., AIR 2010 SC 2587, mandated that every department of the Government should undertake a one-time exercise of verification of such employees to consider if they are eligible to be regularized, and if so, to regularize them. This being the law of the land has to be followed in letter and spirit by all concerned. The concerned department in the instant case has however, acted as per its own decision overlooking the mandate of the Apex Court to simply bring the petitioners (and similarly placed other employees) to the work-charged establishment instead of undertaking the exercise as mandated in Umadevi. The stand of the opposite parties is therefore, untenable.*



This Court is also unable to agree with the other contention raised by the opposite parties that the petitioners being governed by the Instructions 1974 cannot seek any relief de hors such instructions. This is for the reason that undoubtedly Instructions 1974 are applicable to all Work-Charged employees but the same does not speak of regularization of such employees, but lays down their various service conditions. As already stated, even apart from Umadevi, the FD Resolution dated 15.05.1997 holds the field in the matter of regularization of not only NMF/DLR/Job Contract employees but also the Work-Charged employees. Significantly, the opposite parties have themselves stated so in their counter affidavit under paragraph-9, the relevant portion of which is extracted herein below:

- ‘9. *** Moreover, it is humbly submitted that the Finance Department in a subsequent resolution dated 15.5.1997 on the scheme for absorption of NMR/DLR/Job Contract Workers under Regular establishment vide Annexure-B have in supersession to all the orders/resolution/notification etc. issued by various department of Government for regularization of such category of workers issued norms and conditions for absorption in regular establishment. The Para-8 of the said resolution clearly states that while filling the regular vacant posts preference shall be given to Work-Charged Employees first. Where no suitable Work-Charged employees are available to man the post, preference shall be given in the following order, i.e., NMR/DLR/Job Contract Workers. Thus, there is



*existing scheme for absorption in regular establishment as Finance Department Resolution dated 15.05.1997 vide Annexure-B which supersedes all previous resolutions including Finance Department Resolution dated 22.01.1965 dated 06.03.1990 issued in the subject matter of absorption. ***'*

However, the provisions of the Resolution were never applied in case of the petitioners.

15. *It is also seen that the claim of regularization of the petitioners is sought to be repelled by the opposite parties by contending that they have made a backdoor entry into Government service without being sponsored by the employment exchange or undergoing any recruitment procedure. In this context, it is significant to refer to the averments made under paragraph-6 of the writ petition to the effect that the petitioners were duly appointed against existing vacant posts in the regular establishment. Such averment has not been controverted in any manner in the counter affidavit. Even assuming for a moment that the petitioners were not validly engaged, the question is, how could they be retained for such an inordinately long period of time and secondly, how could a gradation list of such employees be prepared and finalized and thirdly, how could they be taken over to the work-charged establishment? Of course, this court is conscious of the proposition that mere continuance for a long period per se does not confer any right on the person concerned to claim regular appointment de hors the Constitutional requirement, but then the observations of the Constitution Bench in Umadevi*



under paragraph-53 thereof as referred to hereinbefore, cannot also be overlooked. The long and short of the issue at hand is, the petitioners claim to have fulfilled the criteria laid down in Umadevi and therefore, should at least have been considered for regularization of their services within six months of the passing of judgment in Umadevi.

16. *From the facts narrated hereinbefore, it is apparent that the petitioners, despite having put in merely three decades of continuous service to the State have been left in the lurch. Some of them have also retired in the meantime. The fact that the petitioners have continued for so long proves that there was work for them. If such be the case then, taking work from them for such a long period of time, but depriving them from the wages and other benefits payable/being paid to their counter-parts in the regular establishment is nothing but exploitation of the labour force by the Government, which is not expected from it, as it is supposed to be a model employer. The direction of the Constitution Bench in Umadevi, as amplified in M.L. Kesari [AIR 2010 SC 2587] is clear and unambiguous and places an obligation on the Government to regularize as one-time measure, all eligible casual employees who fulfill the criteria laid down therein within a period of six months. Alas, sixteen long years have passed since the date of judgment in Umadevi and yet there are no materials to suggest that the case of the petitioners was considered in pursuance of the ratio of Umadevi. It would therefore, be in the fitness of things to remit the matter to the opposite parties to first take a decision with regard to regularization of the services of the petitioners with due regard to all*



relevant factors like availability of posts, seniority etc.”

6.3. In *Meera Piri Vrs. State of Orissa and Ors.*, 104 (2007) CLT 445 = 2007 (II) OLR 533 = 2007 SCC OnLine Ori 166 in the context of NMR employees who have worked for considerable length of time, it was observed as follows:

“12. Law is well settled that main concern of the Court in the above situation is to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16 of the Constitution of India. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. Since the State is a model employer it is for this reason equal pay must be given for equal work which is indeed one of the directive principles of the Constitution. The person should not be kept in temporary or ad hoc status for long time. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularization. If an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to reservation policy of the State. The normal rule of course is regular recruitment through the prescribed agency but exigencies of administration



may sometimes call for an ad hoc and temporary appointment to be made.

13. *The question of regularization in any service including any Government service arises in two contingencies.*

Firstly, if on any available clear vacancies which are of a long duration, appointments are made on ad hoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the incumbent concerned have continued to be employed for a long period of time with or without any artificial break and their services are otherwise required by the institution which employs them, a time may come in service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employee concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry.

The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaws in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. The Petitioner's case comes under first category."



6.4. In the case at hand, the opposite parties have not disputed nor set forth in the counter denying the fact of vacancy position as reflected in Letter *vide* Memo No.1335, dated 21.03.1998 issued by the Superintending Engineer, Central Circle, Rural Works Department. It is manifest from the record that for more than 30 years the model employer-State utilized the service of the petitioner as Watchman.

6.5. In a case where an employee has served for 32 years in the Work-Charged Establishment, this Court *vide* Judgment dated 26.04.2022 in the case of *Biswanath Gouda Vrs. State of Odisha & Others*, WPC(OA) No.2359 of 2013, observed the following with regard to entitlements regarding service benefits:

“8. Reading the above this Court finds, one must have completed five years of continuous service and there was likelihood of continuance of him in future and the post where the Petitioner is placed must be a sanctioned and permanent in nature and in such contingency, if considered suitable, one should be absorbed in the corresponding post created in regular establishment. The Opposite Parties though took the plea that the Petitioner has served in different projects, therefore, there is no application of above condition, this Court, however, finds, it is the State Government who had engaged the Petitioner though in a different establishment, but in particular scale of pay. The State utilized the services of the Petitioner for long 32 years that too continuously for



more than three decades. Petitioner had no choice but to continue under the Public Establishment. Not only this establishment, but even considering the length of services of the Petitioner imparted, position of Law even after tempted to bring him to regular establishment. It is too late for the State-Opposite Parties to claim that since the Petitioner was engaged allthrough in work-charged establishment, he is not entitled to pension otherwise. This Court here again also finds, at some point of time considering the claim of the Petitioner, name of the Petitioner name was already empaneled and recommended to be brought into the regular establishment and as has also been communicated to the Petitioner vide Annexure-12 on 25.06.2010 i.e. the date the Petitioner was still in service. The entire gamut clearly establishes that there is exploitation of services of the Petitioner by none else than the State-Establishment. This person having continuously served for 32 years, was entitled to several promotions and while continuing as such, he was to entitled to different scale of pay. It is unfair and unbecoming on the part of the State to see that it's employees after providing so much of service even more than three decades of his career, does not get any protection to survive for the rest part of his life and there is clear obstruction by the State to see its employee after putting up so much of service at least to have a decent retired life. At a time when there is a class of people at State level so also Central level are entitled to pension even if they have not served one elected term. This Court is of view that the State has not performed its duty as a model employer.



9. *Now coming to decide; upon superannuation whether the Petitioner maintains a claim for being considered for pension, this Court here finds, the O.A. decided by the Tribunal bearing No.622 of 1999 in the case of Chaitanya Gouda & Ors. Vrs. State of Orissa & Others, clearly involves a superannuated person like that of the Petitioner. The Tribunal deciding the above O.A. vide Annexure-13 has given the following direction in paragraph No.5 therein:*

'5. I accordingly direct that the applicants shall be absorbed in any establishment posts from the time they completed five years continuous service till the date when they retired from service for the purpose of pension and other pensionary benefits. After such absorption, their pension and other pensionary benefits shall be computed on the basis of the notional fixation of pay in the regular establishment by adding annual increments which fell due and also taking into account various revisions of pay scales that were introduced. The process shall be completed within three months from the date of receipt of a copy of this order. Accordingly, the Original Application is allowed.'

10. *In a further development this Court finds, for the order of the Tribunal hereinabove being challenged before the High Court in O.J.C. No.12087 of 1999, this Court by its Judgment dated 01.05.2001 had ultimately passed the following in confirmation with the order of the Tribunal:*

'2. Having heard learned counsel, we find no ground to interfere with the impugned order in



view of the fact that the matter in dispute already stands concluded by two decisions of this Court in State of Orissa & others Vrs. Jhuma Parida & ors. (O.J.C. No.1162 of 1999, decided on 10.05.2000) and State of Orissa and others Vrs. Sudarsan Sahu and another (O.J.C. No.11028 of 1999 decided on 25.11.1999) in which similar challenge to the order of the Tribunal was made.

Admittedly opposite parties 1 to 5 rendered their valuable services and considering this and in the light of the decision of the Apex Court in SLP No.11929-930 of 1998 the impugned direction was issued. Hence, we are of the view that no illegality has been committed by the Tribunal in its order. Accordingly, the writ application is dismissed.'

- 11. This matter again visited the Hon'ble apex Court and the Hon'ble apex Court in disposal of the SLP(C)/2003 CC 3196/2003 has come to dismiss the SLP observing as follows: "It appears that some officers of the State have formed the habit of not filing the petition for special leave within a reasonable time. There is a delay of 578 days in filing the present petition for which no justifiable reason is mentioned in the application for condonation of delay. Hence this petition is dismissed on the ground of delay with Rs.5,000/- as costs to be paid to the Supreme Court Legal Services Committee.*
- 12. This Court here finds, there has been compliance of the order of the Tribunal in O.A. No.622 of 1999 after final disposal of the matter in Hon'ble apex Court*



and further there has also been compliance of similar nature of relief involving similar issues disposed of by the Tribunal in O.A. No.425 of 2011. This Court again finds, there has been again disposal of number of writ petitions by this Court involving similar issue such as W.P.(C) No.19550 of 2011 and in one such writ petition while a Division Bench of this Court taking note of similar development through several writ petitions and also taking note of development through disposal of Civil Appeal No.10690 of 2017, finally directed the State to comply the direction in favour of the Petitioner within specific period. It is shocking to observe that even after the State's endeavor in Hon'ble apex Court in similar matters, the State does not realize the legal state of affairs in such matters and compelling the persons to avail till a command is given by the competent Court."

6.6. This Court in *Anadi Sunai Vrs. State of Odisha, WPC (OA) No.302 of 2010 vide Order dated 18th February, 2022* observed as follows:

"5. It is contended that one Narusu Pradhan, a similar circumstanced person like the petitioner had filed O.A. No. 1189 (C) of 2006 praying for retrial benefits. The Tribunal allowed the retrial pensionary benefits in his favour vide order dated 11.06.2009, which was challenged by the State before this Court in W.P.(C) No. 5377 of 2010. This Court dismissed the writ petition on 19.12.2011 and confirmed the order passed by the Tribunal. Thereafter against the order passed by this Court, the State has preferred SLP in



Civil Appeal No. 22498 of 2012, the same was also dismissed on 07.01.2013.

6. *In that view of the matter, the relief claimed by the petitioner is fully covered by the judgment of the Tribunal passed in the case of Narusu Pradhan, which has been confirmed by this Court as well as the apex Court. Thus the petitioner, having stood in similar footing, is entitled to get the benefits which have been extended to Narusu Pradhan and all the differential benefits and consequential benefits, as due and admissible to him, shall be granted to him in accordance with law within a period of four months from the date of communication of this order.”*

6.7. Holding that the petitioner-Watchman is treated to have been regularized in service at least one day prior to his superannuation notionally, this Court in the case of *Chandra Nandi Vrs. State of Odisha & Others, 2014 (I) OLR 734 = 2014 SCC OnLine Ori 738 = 118 (2014) CLT 282*, directed for calculation of entitlements including pension and arrear pension. Said matter being carried to the Hon'ble Supreme Court of India, in the case of *State of Odisha Vrs. Chandra Nandi, (2019) 4 SCC 357*, the Order of this Court reported in *2014 (I) OLR 734 = 2014 SCC OnLine Ori 738 = 118 (2014) CLT 282* has been set aside on the following ground:

“11. The order [Chandra Nandi Vrs. State of Orissa, 2014 SCC OnLine Ori 738 = 118 (2014) CLT 282] impugned in this appeal suffers from the aforesaid



error, because the High Court while passing the impugned order [Chandra Nandi Vrs. State of Orissa, 2014 SCC OnLine Ori 738 = 118 (2014) CLT 282] had only issued the writ of mandamus by giving direction to the State to give some reliefs to the writ petitioner (respondent) without recording any reason.

12. *We are, therefore, of the view that such order is not legally sustainable and hence deserves to be set aside.”*

This Court upon rehearing the matter on remand by the Hon’ble Supreme Court *vide* (2019) 4 SCC 357 made the following Order on 03.02.2021:

- “7. *The said writ application was disposed of on 06.05.2004.*

In paragraph-4 of the said order, it has been observed as follows:

‘In respect of work charged establishment the Government of Orissa vide Finance Department Office Memorandum No.5483/F dated 6th March, 1990 decided that consequent upon absorption of work charged employees in the corresponding post created in regular establishment, the period of service rendered by him in Work-Charged Establishment, shall count towards pensionary benefits under the Orissa Pension Rules, 1977 subject to the condition that the employees so absorbed should have served continuously for a minimum period of five years in the Work-Charged establishment. This decision was not followed by the



*subordinate authorities. Thus, the fate of the Work-Charged employees who rendered a quite good years of service remained in dark. ***'*

Accordingly the said writ application was allowed and direction was given to absorb the petitioner in any establishment post from the time he completed five years continuous service till the date he retired from service and thereafter his pension and other pensionary benefits shall be granted on the basis of notional fixation of pay in regular establishment as has been granted to the applicants in O.A. No. 622 of 1999 and other cases as reflected in the said order of this Court. The order passed by this Court, was confirmed by the Apex Court in Civil Appeal No. 5575 of 2007 dated 22.07.2015.

- 8. Such was the issue in case of one Narusu Pradhan, a work charged employee, wherein after the order passed by the Hon'ble Apex Court in S.L.P No. 22498 of 2012, the authorities passed an office order on 08.05.2013 by creating supernumerary post, regularized his service for the purpose of sanctioning pension.*
- 9. This Court had also occasion to deal with this issue again in W.P.(C) No. 1534 of 2008, i.e. in the case of State of Orissa and others Vrs. Jyostna Rani Patnaik and others, wherein direction of the Tribunal to regularize the service of the applicant's husband by way of creating a supernumerary post, if necessary from the time he had completed 5 years of service as work-charged employee by bringing him over to regular establishment was challenged before this Court by the State authorities. The said case was*



disposed of vide judgment dated 19.12.2016, affirming the view expressed by the Tribunal.

13. *It was also brought to the notice of this Court about the order dated 02.04.2018 passed in OJC No. 12017 of 2000, wherein it has been observed/directed as follow:*

Having heard learned counsel for the parties and on perusal of the record, more particularly the order impugned herein, it appears that the Government in Finance Department vide resolution dated 22.01.1965 decided for absorption of such employees to regular establishment after completion of five years in the Work Charged Establishment. Subsequently vide memorandum dated 06.03.1990, Finance Department has also extended the pensionary benefit to work charged employees. Learned Tribunal in O.A. No. 2389 of 1997 vide order dated 23.02.1999 has already disposed of a case of similar nature. Even learned Tribunal has gone on to adjudicate one dispute in O.A. No. 1819 of 1996 regarding extension of pensionary benefit to such work charged employees, who have already retired. The plea of Additional Government Advocate to the effect that the opposite party could not have been brought over to regular establishment, as there was no vacancy, is not sustainable in law, as it has already been held in a catena of decisions that even if there is no clear vacancy, a work charged employee can be brought over to regular establishment for at least one day by creating a supernumerary post to make him entitled for pensionary benefit.



In view of the above, we modify the order of learned Tribunal to the extent that the opposite party shall be brought over to the regular establishment for at least one day by creating a supernumerary post, if necessary and accordingly, he shall be extended with the pensionary benefit as would be admissible to him. The entire exercise shall be completed within a period of two months hence.

14. *It was also contended that relying on such decision, may other writ petitions, such as OJC No. 12017 of 2000 (decided on 16.04.2019), W.P.(C) No. 12017 of 2000 (decided on 16.04.2019) have also been disposed of.*
15. *While dealing with the matter, this Court deprecates the action of the State-opposite parties. The State-opposite parties have not fair enough to comply the directions given by the Hon'ble Apex as indicated above and has only dragging such employees into multiple litigations. The State-authorities are also misleading this Court as well the Hon'ble Apex Court on each and every occasions in case of such types of work-charged employees, in spite of law settled in this regard and as well as specific circulars/resolutions/ orders have been passed by the State Authorities in terms of the direction of this Court.”*

The said matter was carried to the Hon'ble Supreme Court of India again in *SLP(C) No. 21180 of 2021 [State of Odisha & Ors. Vrs. Chandra Nandi]* by the State of Odisha, which came to be disposed of on 06.05.2022 with the following order:



- “1 In the facts and circumstances of the present case, we are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution.
- 2 The Special Leave Petition is accordingly dismissed.
- 3 However, the question of law is kept open to be resolved in an appropriate case.
- 4 Pending application, if any, stands disposed of.”

6.8. It is held in *Khoday Distilleries Limited Vrs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited*, (2019) 4 SCC 376, as follows:

“26. From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three Judge Bench of this Court in *Kunhayammed [Kunhayammed Vrs. State of Kerala, (2000) 6 SCC 359]* and summed up in paragraph 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under:

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing



the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

- (vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.*
- (vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.’***”*

6.9. It may also be relevant to have regard to the following principle enunciated by the Hon’ble Andhra Pradesh



High Court at Hyderabad in the case of *Koduru Venka Reddy Vrs. The Land Acquisition Officer & Revenue Divisional Officer, Kavali*, 1983 SCC OnLine AP 232 = (1994) 1 ALT 227 (DB) = (1988) 63 Comp Cas 376 = (1987) 67 STC 424 = (1988) 170 ITR 15 = (1988) 72 FJR 166 with regard to binding effect of judgment of High Court:

“3. We are of the view that when a judgment of the High Court is the subject-matter of an appeal and the said judgment is suspended, the only effect of such suspension is that that judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein is binding on all Courts including Single Judges and Division Benches of this Court. The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered. ***”

6.10. Applicability of parity and consistency in approach has been considered by the Hon’ble Supreme Court of India in *Radhasoami Satsang Vrs. CIT*, (1992) 1 SCC 659. After referring to said case, the Hon’ble Supreme Court in *Bharat Sanchar Nigam Limited Vrs. Union of India*, (2006) 3 SCC 1 = 2006 SCC OnLine SC 258 laid down as follows:

“20. The decisions cited have uniformly held that *res judicata* does not apply in matters pertaining to tax for different assessment years because *res judicata* applies to debar courts from entertaining issues on



the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why the courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.”

6.11. Looking at the present matter in the above perspective, it can be safely said that this Court has been consistently taking view that long years of service rendered by lowly paid employees like NMRs and DLRs are required to be considered sympathetically for regularization and they are entitled to pensionary and other retiral benefits. The State has been accepting the view expressed by this Court on earlier occasion in respect of many NMR/DLR



employees. On the same principle it is required to accept the present matter in order to maintain consistency.

6.12. It may not be out of place to have regard to the fact as submitted at the Bar that in the context of entitlement of pension of a Watchman who was brought over to Work-Charged Establishment this Court in *Debendranath Sahoo Vrs. State of Odisha and others*, WPC(OA) No.1791 of 2017, reported at (2022) III ILR-CUT 282 directed the authority concerned to consider extension of the benefit of pension to such employee. It is conceded by counsel appearing for both the sides that said judgment has not been challenged before any higher forum. Thus this Court finds force in the submission of Sri Mihir Kanta Rath learned Advocate appearing for the petitioner that the relief granted in the said reported case can be extended to the instant petitioner on the anvil of Article 14 of the Constitution of India.

7. Learned counsel for the petitioner submitted that subsequent to *State of Karnataka and others Vrs. Umadevi and others*, AIR 2006 SC 1806, in many other cases as detailed hereunder, the Courts have considered regularization in service considering length period of service rendered by Contractual/DLR/NMR employees. *Vide Judgment dated 18.08.2025* rendered in *Sudhansu Sekhar Dash Vrs. State of Odisha*, W.P.(C) No.15128 of 2022, this Court referred to *Narendra Kumar Tiwari Vrs.*



State of Jharkhand, (2018) 8 SCC 238; Sunil Barik Vrs. State of Odisha, 2021 (II) OLR 469; State of Jammu and Kashmir Vrs. District Bar Association, Bandipora, (2017) 3 SCC 410; Suwendu Mohanty Vrs. State of Odisha, 2015 SCC OnLine Ori 267; Amarendra Kumar Mohapatra Vrs. State of Odisha, (2014) 4 SCC 583 = AIR 2014 SC 1716; Subrata Narayan Das Vrs. State of Odisha, W.P.(C) No.18659 of 2016, vide Judgment dated 12.07.2022; Union of India Vrs. Central Administrative Tribunal, (2019) 4 SCC 290; Vibhuti Shankar Pandey Vrs. State of Madhya Pradesh, 2023 LiveLaw (SC) 91 = (2023) 3 SCC 639; Ranjeet Kumar Das Vrs. State of Odisha, 2018 (I) ILR-CUT 695; Jaggo Vrs. Union of India, 2024 SCC OnLine SC 3826; Shripal Vrs. Nagar Nigam, 2025 SCC OnLine SC 221; Orissa Water Supply and Sewerage Board Vrs. Bijay Kumar Samal, W.A. No.857 of 2024 & Batch, vide Judgment dated 30.07.2025; Rajendra Kumar Nayak Vrs. Odisha Mining Corporation, 2017 (II) ILR-CUT 912; Dr. Prasana Kumar Mishra Vrs. State of Odisha, 2016 (I) ILR-CUT 373; Ramesh Chandra Mohapatra Vrs. State of Odisha, 2022 SCC OnLine Ori 2587, and directed the authorities to consider the long period of service rendered by the employees in order to regularize their services.

- 7.1. By posing a question “Whether the action/inaction of the respondent-State in not recognizing the appellants’



*continuous service for the purpose of regularization is arbitrary and violative of Article 14 of the Constitution of India?” in *Bhola Nath Vrs. State of Jharkhand*, 2026 LiveLaw (SC) 95, it has been discussed as follows:*

“11. At the outset, we find it necessary to express our disapproval of the manner in which the High Court has approached the present lis. The controversy before the Court was not one of mere acquiescence or implied waiver of rights. The High Court, in our view, has proceeded on a mechanical application of precedents without engaging with the core constitutional issues involved, thereby reducing the dispute to one of acceptance of contractual terms, divorced from its larger constitutional context.

11.1. This Court has consistently held that the State, being a model employer, is saddled with a heightened obligation in the discharge of its functions. A model employer is expected to act with high probity, fairness and candour, and bears a social responsibility to treat its employees in a manner that preserves their dignity. The State cannot be permitted to exploit its employees or to take advantage of their vulnerability, helplessness or unequal bargaining position.

11.2. It therefore follows that the State is required to exercise heightened caution in its role as an employer, the constitutional mandate casting upon it a strict obligation to act as a model employer, an obligation from which no exception can be countenanced.



13. *Another facet requiring consideration in the case of contractual employees, such as the present appellants, is the doctrine of legitimate expectation. Where employees have continued to discharge their duties on contractual posts for a considerable length of time, as in the present case, it is but natural that a legitimate expectation arises that the State would, at some stage, recognize their long and continuous service. It is in this belief, bolstered by repeated extensions granted by the Executive, that such employees continue in service and refrain from seeking alternative employment, notwithstanding the contractual nature of their engagement. At this juncture, it is thus apposite to advert to the principles governing the doctrine of legitimate expectation as enunciated by this Court in Army Welfare Education Society Vrs. Sunil Kumar Sharma, (2024) 16 SCC 598 wherein it was held as follows:*

‘63. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:

63.1. First, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;

63.2. Secondly, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;

63.5. Fifthly, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from



a consistent past practice, without any reasonable basis.

64. *The aforesaid features, although not exhaustive in nature, are sufficient to help us in deciding the applicability of the doctrine of legitimate expectation to the facts of the case at hand. It is clear that legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in State action. It does not extend to and cannot govern the operation of contracts between private parties, wherein the doctrine of promissory estoppel holds the field.'*

It is, therefore, not difficult to comprehend the expectation with which such contractual employees continue in the service of the State. The repeated conduct of the employer-State in expressing confidence in their performance and consistently granting monetary upgrades & tenure extensions reasonably nurtures an expectation that their long and continuous service would receive further recognition.

13.1. *Another Constitution Bench in State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1 cautioned that the doctrine of legitimate expectation cannot ordinarily be extended to persons whose appointments are temporary, casual or contractual in nature. The relevant extract of the judgment reads as follows:*

'47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant



rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.'

However, this Court in Umadevi (supra) clarified that the bar against invocation of the doctrine of legitimate expectation applies only to those temporary, contractual or casual employees whose engagement was not preceded by a proper selection process in accordance with the extant rules. Consequently, where such engagement is made after following a due and lawful selection procedure, there is no absolute bar in law preventing such employees from invoking the doctrine of legitimate expectation.



13.2. *In the present case, the respondent-State had engaged the services of the appellants on sanctioned posts since the year 2012. It was only towards the end of the year 2022 that the respondents communicated that no further extension of the appellants' engagement was likely to be granted.*

13.3. *In our considered opinion, the aforesaid action is not only vitiated by arbitrariness but is also in clear derogation of the equality principles enshrined in Article 14 of the Constitution. The respondent-State initially engaged the appellants in their youth to discharge public duties and functions. Having rendered long and dedicated service, the appellants cannot now be left to fend for themselves, particularly when the employment opportunities that may have been available to them a decade ago are no longer accessible owing to age constraints.*

13.4. *We are unable to discern any rational basis for the respondent-State's decision to discontinue the appellants after nearly ten years of continuous service. We are conscious that the symbiotic-relationship between the appellants and the respondent-State was mutually beneficial, the State derived the advantage of the appellants' experience and institutional familiarity, while the appellants remained in public service. In such circumstances, any departure from a long-standing practice of renewal, particularly one that frustrates the legitimate expectation of the employees, ought to be supported by cogent reasons recorded in a speaking order.*

13.5. *Such a decision must necessarily be a conscious and reasoned one. An employee who has satisfactorily*



discharged his duties over several years and has been granted repeated extensions cannot, overnight, be treated as surplus or undesirable. We are unable to accept the justification advanced by the respondents as the obligation of the State, as a model employer, extends to fair treatment of its employees irrespective of whether their engagement is contractual or regular.

13.6. This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of “part-time”, “contractual” or “temporary” in perpetuity and thereby exploiting them by not regularizing their positions. In Jaggo Vrs. Union of India, 2024 SCC OnLine SC 3826 this Court underscored that Government departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization.

13.7. In Shripal Vrs. Nagar Nigam, 2025 SCC OnLine SC 221 and Vinod Kumar Vrs. Union of India, (2024) 9 SCC 327 this Court cautioned against a mechanical and blind reliance on Umadevi (supra) to deny regularization to temporary employees in the absence of statutory rules. It was held that Umadevi (supra) cannot be employed as a shield to legitimise exploitative engagements continued for years without undertaking regular recruitment. The Court further clarified that Umadevi itself draws a distinction between appointments that are “illegal” and those that are merely “irregular”, the latter



being amenable to regularization upon fulfilment of the prescribed conditions.

13.8. *In Dharam Singh Vrs. State of U.P., 2025 SCC OnLine SC 1735, this Court strongly deprecated the culture of “ad-hocism” adopted by States in their capacity as employers. The Court criticised the practice of outsourcing or informalizing recruitment as a means to evade regular employment obligations, observing that such measures perpetuate precarious working conditions while circumventing fair and lawful engagement practices.*

13.9. *The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason.*

13.10. *In the aforesaid backdrop, we are unable to persuade ourselves to accept the respondent-State’s contention that the mere contractual nomenclature of the appellants’ engagement denudes them of constitutional protection. The State, having availed of the appellants’ services on sanctioned posts for over a decade pursuant to a due process of selection and having consistently acknowledged their satisfactory performance, cannot, in the absence of cogent reasons or a speaking decision, abruptly discontinue*



such engagement by taking refuge behind formal contractual clauses. Such action is manifestly arbitrary, inconsistent with the obligation of the State to act as a model employer, and fails to withstand scrutiny under Article 14 of the Constitution.”

7.2. This Court feels it apt to refer to the case of *Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265*. In this case the appellant therein was temporarily appointed in Class IV post of night guard by Principal of College who was not competent authority to make such appointment. The appellant served on said post for 29 years on daily wage basis. The appointment of appellant was done out of necessity and concern for college, and duly intimated to the University in 1988. No issue was raised by the University pertaining to appointment of appellant as *ultra vires* the Bihar State Universities Act, 1976. Under such premises, it was held that the appointment of appellant cannot be termed as illegal but was only irregular. It has further been observed in the said reported case as follows:

“12. Applying the ratio of Umadevi’s case, this Court in Nihal Singh & Ors. Vrs. State of Punjab & Ors., (2013) 14 SCC 65 directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:

‘35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant



factor with reference to which the executive Government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.'

13. *In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010.*
14. *Considering the facts and circumstances of the case that the appellant has served the University for more*



than 29 years on the post of night guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularize the services of the appellant retrospectively with effect from 03.01.2002 (the date on which he joined the post as per the direction of the Registrar).”

7.3. The present case apparently turns on better footing inasmuch as the facts and circumstances discussed above does not reveal nor can it be said that the appointment of the petitioner was irregular much less illegal. Pertinent feature in the present case akin to that obtained in the case of *Amarkant Rai (supra)* is that there is no material placed on record regarding the details whether any other Watchman was appointed against the sanctioned post, in the facts and circumstances of the case. In the case at hand the authority has utilized the service of the petitioner for around 31 years since 1984. Furthermore, the name of the petitioner found place at Serial No.1 against the post “Watchman (Unskilled)” under “General Category” in the “Detailed Seniority List of NMR/DLR Employees Working under Rural Works Division, Kendrapara” (Annexure-4) and his service has been reckoned with effect from “01.07.1984 in line with fixation of assumed date of birth when year of birth is declared”, being an engagee prior to 12.04.1993 (Annexure-A/3 enclosed with counter affidavit).



7.4. No reply or answer is placed nor is there any objection set up on record by the opposite parties with respect to discriminatory treatment meted out to the petitioner. It is affirmed in said paragraph of the counter affidavit that:

“That the petitioner has filed the aforesaid writ application to declare the action of the opposite parties in bringing over the petitioner to the work charged establishment as per order dated 25.02.2012 under Annexure-8 instead of regularising the services of the petitioner in terms of Annexure-9 and the regularisation of similarly situated DLRs working in different division of Works Department as illegal. The petitioner has also prayed for a direction to the opposite parties to regularise the services of the petitioner in terms of Annexure-9 and similar orders passed by different divisions coming under Works Department i.e. from the year 1998 within a stipulated period and to extend all service and financial benefits on such regularisation of the petitioner from the year 1998 till his retirement within a stipulated period.”

7.5. This Court finds only objection at paragraph 9 that *“the petitioner in compliance to the letter under Annexure-5 submitted his reply under Annexure-6, but he failed to submit any conclusive/satisfactory proof with regard to his actual date of engagement”*. At paragraph 10 of the counter affidavit the opposite parties simply rested burden of proof on the employee by stating thus:

*“*** the petitioner in spite of intimation and opportunity failed to provide any records establishing the actual date*



of his engagement, the name of the petitioner was not considered by the Government to bring his service under the Work-Charged Establishment from 11.02.2011 though other DLRs got the same benefit. Because of the direction of the learned Tribunal in O.A. No.814(C) of 2011 filed by the petitioner, the opposite party No.3 again reviewed the matter and the petitioner was engaged. On such verification/enquiry, the opposite party No.3 came to know that the petitioner was engaged by ways of transfer of his service from the Expressway Division, Kendrapara. Taking into account such transfer of service, the initial date of engagement of the petitioner was accepted and recommended by the opposite party No.3 to the opposite party No.2 to accept it to be with effect from 01.07.1984 as per report vide Letter under Annexure-A/3”.

- 7.6. This Court strongly disapproves such a stance taken by the employer-opposite party No.3 (Executive Engineer, Rural Works Division, Kendrapara. The authority concerned could have easily verified and ascertained the actual date of engagement by calling for record relating to his engagement as DLR from the Office of Expressway Division, Kendrapara within the same locality/area. The model employer should have acted pragmatically and instead of putting the blame on the employee, a Watchman, being custodian of official records the opposite parties should have taken much care to verify relevant records maintained by them. On the one hand the opposite parties admitted transfer of the petitioner to Rural Works Division in the year 1991 and reckoned 01.07.1984 as the entry into service as DLR prior to



joining in the transferred place. There is no dispute that his service was required to be regularized being engagee prior to 12.04.1993. Because he was brought over to Work-Charged Establishment by Letter in Memo No.331, dated 25.02.2012 issued by the Executive Engineer, Rural Works Division, Kendrapara, the petitioner is not extended the pensionary benefit as he got retired on attaining age of superannuation with effect from 28.02.2015.

7.7. This Court considered entitlement of Work-Charged employee to pensionary benefit in the case of *State of Odisha Vrs. Jugal Kishore Sahoo*, OJC No. 12017 of 2000, disposed of on 16.04.2019. This Court has been pleased to confirm the Order passed by the Odisha Administrative Tribunal by observing thus:

- “2. By way of this writ petition, the petitioners Department have challenged the judgment/order dated 11.05.2000, passed by the Orissa Administrative Tribunal, Bhubaneswar, in O.A. No.2217 of 1999 under Annexure-1, directing the opposite party No.2 therein to sanction the pension and all pensionary benefits to which the applicant opposite party No.1 is entitled to in terms of the resolution of the Government within three month from the date of receipt of order.
3. We have perused the impugned order in detail.



4. *Considering the submissions made and keeping in view the fact that the issue involved in the present case is squarely covered by the order dated 02.04.2018, passed by this Court in OJC No.8149 of 2000, wherein the Work-Charged employee, similarly situated to the present applicant-opposite party No.1 in this case, was directed to be brought over to the regular establishment for at least one day by creating a supernumerary post, if necessary and accordingly, he should be extended with the pensionary benefit as would be admissible to him, the applicant-opposite party No.1 shall be extended the pensionary benefit as would be admissible to him as per the law settled by this Court on the date on which he attained superannuation. For ready reference, the said order dated 02.04.2018 is reproduced hereunder:*

‘This writ petition has been filed on behalf of the State Government and its functionaries challenging the legality, validity and correctness of O.J.C. No. 12017 of 2000 order dated 14.10.1999 passed by the Orissa Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. NO.1920 of 1999. Fact in nut shell giving rise to filing of the present writ petition is that though the opposite party was initially appointed on 01.02.1964 in the Work Charged Establishment under Water Resources Department and continued as such till his retirement on 31.03.1997, his services was not brought over to regular establishment. It was his case before learned Tribunal that pursuant to resolution of the Finance Department dated 22.01.1965, after completion of five years from the date of entry in the Work-Charged Establishment he should have been



regularized in service. Due to inaction of the authorities, he has been deprived of his pensionary benefits. Learned Additional Government Advocate for the petitioners-State submits that though Government in Finance Department vide resolution dated 22.01.1965 decided for absorption of such employees to regular establishment after completion of five years in the Work-Charged Establishment, it has no application to the case of the opposite party as the job in which the opposite party was engaged was not permanent in nature. Moreover, the opposite party being a Work-Charged employee is governed under Work-Charged Employee (Appointment and Conditions of Service) Instruction, 1974, which only provides gratuity to such employees. Having heard learned counsel for the parties and on perusal of record, more particularly the order impugned herein, it appears that the Government in Finance Department vide resolution dated 22.01.1965 decided for absorption of such employees to regular establishment after completion of five years in the Work-Charged Establishment. Subsequently, vide memorandum dated 06.03.1990, Finance Department has also extended the pensionary benefit to Work-Charged employees. Learned Tribunal in O.A. No. 2389 of 1997 vide order dated 23.02.1999 has already disposed of a case of similar nature. Even learned Tribunal has gone on to adjudicate one dispute in O.A. No. 1819 of 1996 regarding extension of pensionary benefit to such Work-Charged employees, who have already retired. The plea of Additional Government Advocate to the effect that the opposite party could not have been brought over to regular establishment, as there was no vacancy, is not sustainable in law, as it has



already been held in a catena of decisions that even if there is no clear vacancy, a work charged employee can be brought over to regular establishment for at least one day by creating a supernumerary post to make him entitled for pensionary benefit. In view of the above, we modify the order of learned Tribunal to the extent that opposite party shall be brought over to the regular establishment for at least one day by creating a supernumerary post, if necessary and accordingly, he shall be extended with the pensionary benefit as would be admissible to him. The entire exercise shall be completed within a period of two months hence. With the aforesaid modification in the impugned order, the writ petition is disposed of.'

5. *In view of the above, we dispose of this writ petition in terms of the order quoted above. Accordingly, the same is allowed to the aforesaid extent only.*
6. *The arrears dues of the applicant will be cleared within a period of four months from today and if it is not done so, the applicant-opposite party No.1 will be entitled to interest @ 9% per annum."*

7.8. In the case of *State of Odisha Vrs. Chaitantya Gouda, 2001 SCC OnLine Ori 131*, this Court came to observe as follows in the case of Work-Charged employee who were not extended the benefit of pensionary benefit:

- "1. *Opposite parties 1, 2 and 5 are working as work-charged employees from the year 1969, 1964 and 1963 respectively, whereas opp. parties 3 and 4 retired as Work-Charged employees after having worked from 1962 and 1965 respectively in the*



establishment in question. No pensionary benefits having been extended, they approached the Orissa Administrative Tribunal, Bhubaneswar by way of Original Application No. 622 of 1999 for a direction to the Respondents to grant them retirement and other benefits by declaring them to be regular employees.

2. *By following decision in a batch of cases, the Tribunal allowed the Original Application in the following terms:*

'I accordingly direct that the applicants shall be absorbed in any establishment posts from the time they completed five years continuous service till the date when they retired from service. After such absorption, their pension and other pensionary benefits shall be computed on the basis of the notional fixation of pay in the regular establishment by adding annual increments which fell due and also taking into account various revisions of pay scales that were introduced. The process shall be completed within three months from the date of receipt of a copy of this order. Accordingly the Original Application is allowed.'

3. *Aggrieved therewith the State has preferred this writ petition.*
4. *Having heard learned counsel, we find no ground to interfere with the impugned order in view of the fact that the matter in dispute already stand concluded by two decisions of this Court in State of Orissa Vrs. Juma Parida (O.J.C. No. 1162 of 1999, decided on 10.05.2000) and State of Orissa Vrs. Sudarsan Sahu (O.J.C. No. 11028 of 1999 decided on*



25.11.1999) in which similar challenge to the order of the Tribunal was made.

- 5. Admittedly opp. parties 1 to 5 rendered their valuable services and considering this and in the light of the decision of the Apex Court in SLP No. 11929-930 of 1998 the impugned direction was issued.*
- 6. Hence we are of the view that no illegality has been committed by the Tribunal in its order.*
- 7. Accordingly, the writ application is dismissed.*
- 8. Application Dismissed.”*

7.9. Regard may be had to the following view of the Hon'ble Supreme Court of India expressed in the case of *State of Orissa and others Vrs. Brindaban Behera (Dead) By Lrs. etc., Civil Appeal No.5575 of 2007, vide Order dated 22.07.2015:*

“We have heard learned counsel for the appellants.

This appeal by special leave is directed against the judgment and order dated 6.5.2005 passed by the High Court of Orissa at Cuttack in Writ Petition (Civil) No.8666 of 2004.

It appears that the respondent was appointed in the year 1963 as Motor Launch Driver under the work charged establishment, and continuously worked for 34 years in the work charged establishment. He retired after attaining the age of 58 years in the year 1997.



As against the denial of payment of pension, the respondent moved the High Court.

Considering the aforesaid finding, the High Court allowed the Writ Petition and directed that the respondent is entitled for pension.

In the facts of the case, we do not find any merit in this appeal. The same is, accordingly, dismissed.”

7.10. It may be pertinent to take note of a Division Bench decision of this Court rendered in the case of *Principal Secretary to Government, Works Department, Government of Odisha, Bhubaneswar and others Vrs. Ashok Kumar Pattanayak and another*, W.A. No.975 of 2025, reported in 2026 SCC OnLine Ori 78. Repelling the contention of the opponents that since persons in casual employment or Work-Charged Establishment are not entitled to pensionary benefits in terms of the Odisha Civil Services (Pension) Rules, 1992 as the casual employment in Work-Charged establishment is governed by Executive Instruction of the Odisha Work-Charged Employee (Appointment and Condition of Service) Instruction, 1974, it is held as follows:

“4.1. The first contention of learned AGA that the learned Single Judge erred in allowing the writ petition at the admission stage without giving due opportunity of participation by filing Counter, is difficult to countenance. Firstly, no contention of the kind can be taken without a specific averment to that effect. What is averred in Ground (B) in the Memorandum of



Appeal does not satisfy this requirement, although we cannot brand it as evasive. Secondly, all the contentions urged before us in support of the Appeal were urged before the learned Single Judge, who treated them in his wisdom, although not to the satisfaction of Appellants. It is not a case of denying due opportunity of participation in the proceedings before learned Single Judge. Therefore, the first submission does not impress us.

- 4.2. *The second submission that the provisions of Rule 3 read with Rule 18 of 1992 Rules, as amended in 2005, come in the way of pension being granted to the Respondents, bit difficult to agree with. Such a contention was taken up in Panigrahi supra and in an avalanche of cases; the same came to be negatived and resultantly terminal benefits like pension came to be granted to all other similarly circumstanced employees, as contended by Mr. Mishra. Matter was carried further to the portals of Apex Court and the challenge was laid to rest in SLP (C) Diary No(s).50364 of 2023 disposed off on 02.01.2024, whereby imprimatur was accorded to the Division Bench judgment. Therefore, the second submission also falls to the ground.*
- 4.3. *There is also force in the submission of learned Sr. Advocate Mr. Mishra that when the State has already granted terminal benefits like pension, etc. under the provisions of 1992 Rules post 2005 amendment, would carve out a class within the class of pensioners, which falls foul of D.S. Nakara Jurisprudence. It is not disputed before us by the AGA that all other similarly circumstanced employees, who had litigated before this Court*



successfully, have been granted pensionary benefits under the 1992 Rules, of course mutatis mutandis. If that be so, what justification the State has to adopt a step-motherly attitude for the poor Respondents herein, remains un-understandable. In C. Lalitha supra, Hon'ble Supreme Court deprecated the culpable conduct of State in driving a set of employees to the avoidable legal battle, when other similarly circumstanced set had emerged victorious in the litigation.

4.4. *It hardly needs to be stated that the State, being a Model Employer, vide Bhupendra Nath Hazarika Vrs. State of Assam, AIR 2013 SC 234, should have on its own extended the benefits of decision in Panigrahi supra. That course would have saved public time of the Court and private time of the litigants, when pendency of cases is mounting up. This Court notes it with penury at heart that several unworthy cases are filed before Writ Courts even when debatable issues have already been laid to rest at the level of Apex Court of the country. Which section of the bureaucracy prompts filing of cases of the kind, remains a riddle wrapped in enigma. Such a tendency on the part of State and its instrumentalities under Article 12 of the Constitution of India, needs to be checked and sooner it is done, better it will be. Otherwise, the objects of constitutionally ordained welfare State would be defeated to the detriment of citizens.”*

7.11. So far as discriminatory treatment is concerned, in *Ratnank Mishra Vrs. High Court of Judicature at*



Allahabad, 2025 LiveLaw (SC) 1237 it has been held that:

- “29. High Courts, being Constitutional Courts entrusted to uphold equality and fairness, are expected to encompass such principles within their own administrative functioning as well, and must exemplify the standards of a model employer. Such principles are at the risk of being undermined when discriminatory treatment is meted out to employees similarly situated within the same establishment. Such actions pose grave threat to the sacrosanct principles of non-arbitrariness and reasonableness as enshrined under Articles 14, 16 and 21 of the Constitution of India.
30. In light of the above discussion, we are of the opinion that the Appellants have been caused grave prejudice by the Respondents, in respect of rejection of their representations for regularization, though similarly placed employees have been granted the same, without there being any reasonable distinction between them.
31. During the course of hearing, learned counsel for the Respondent also submitted that the post on which the Appellants were appointed, i.e. ‘Routine Grade Clerk’, is now a dead cadre and it has merged with the post of ‘Computer Assistants’ as per the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2019 which requires computer qualifications and knowledge, i.e. data entry, word processing, etc., therefore direction for regularization cannot be issued. In our view, such argument is also not fair



and reasonable in particular, looking to the report of the Committee, as a result of which, similarly situated persons were granted the benefit of regularization after one year from their date of their initial appointment while also extending the benefit of promotion. Once, as per the discussion made hereinabove, it has been found that the distinction drawn between Category A, B and C employees is not based on any reasonable classification or intelligible differentia, denial of similar relief to the Appellants on the pretext of subsequent amendment in the rules, is not acceptable.

32. *It has also been argued by the Respondent that the Division Bench judgment dated 20.09.2011 has been effectively overruled by the judgment of the full bench of the High Court in In Re: Regularization of Class IV Employees of the High Court of Judicature at Allahabad, 2013:AHC:179951-FB. Without going into the merits of this submission, there is no gainsaying that the genesis of the discrimination which has been meted out to the Appellants can be traced back to the report of the Committee way back in the year 2012. The artificial distinction drawn between the Appellants and other similarly situated employees is the discrimination which must be weeded out in pursuit of justice. It has further been informed that the services of the Appellants have been dispensed with by the High Court with immediate effect vide order dated 15.09.2015 of the Registrar General, and for this reason also it has been contended that they are not entitled for regularization. In our considered opinion, once we have taken a view that the judgment passed by the High Court denying relief of regularization was not*



in accordance with law, such a submission does not hold water particularly in light of the manifest discrimination which is palpably clear and evinced from the record.

33. *While we are cognizant of the fact that ordinarily regularization is a matter best left to policy decisions of the employer, and courts must exercise restraint in issuing directions. However, the present case is exceptional. The Appellants have rendered over a decade of service. Numerous similarly placed employees who were employed through same channel of appointment have been regularized. Therefore, with a view to render complete justice in the peculiar facts and circumstances of the present case, in our view, this is a fit case for exercising our inherent powers under Article 142 of the Constitution of India to issue final operative directions.”*

7.12. In *Raman Kumar Vrs. Union of India, 2023 SCC OnLine SC 1018* in the context of Article 14 of the Constitution of India the following observation is made:

- “8. *Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of Ravi Verma Vrs. Union of India (Civil Appeal No(s).2795-2796 of 2018) decided on 13.03.2018 [2018 SCC OnLine SC 3860] found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India.*



9. *Mrs. Aishwarya Bhati, learned Additional Solicitor General of India appearing on behalf of the respondents, has vehemently opposed the petition. She submits that since posts were not available, and, thereafter, Group 'D' posts have been abolished, the appellants could not have been regularized.*
10. *We are not inclined to accept the submission on behalf of the respondents. When the Chief Commissioner of Income Tax has himself found that 65 persons were entitled to be regularized, the act of regularizing the services of only 35 employees and not regularizing the services of other employees, including the appellants, is patently discriminatory and violative of Article 14 of the Constitution of India.*
11. *In that view of the matter, we find that the High Court was in error in not entertaining the contempt petition. However, at this stage, relegating the appellants again to the High Court would unnecessarily cause delay in delivering justice to the appellants."*

7.13. The following observation of this Court made in *State of Odisha Vrs. Arun Kumar Nath, 2025 SCC OnLine Ori 2696* is noteworthy:

- “1. *The respondents in the instant appeal have been knocking the doors of the Court in pursuit of justice founded upon the concept of equality and the fraternity amongst the homogeneous class, yet their claim for the right on equalities is a far cry. Some of the similarly circumstanced persons, who had*



approached the Court flagging the identical and the similar issues, received the just justice, yet the respondents are thriving for an equality right and equal treatment before the Court of law. It is no gainsaying that the adherence of rule of equality in a public employment is conceded as a basic feature of our Constitution as the certainty is a virtue. The primary object perceived by our forefathers while giving the Constitution is to bring an equality amongst the citizens of the country and equal treatment in juxtaposition with the rule of law and in this regard, the doctrine of equality is, in effect, the heart and soul of the Constitution.

- 2. The adherence of the equality principles not only helps the citizens to reach to a highest potential but also inculcates the sense of justice at par with the equally circumstanced persons. It is not an arid principle finding a space in the Constitution but erodes the differential treatment amongst the equals. It is, thus, a necessary corollary to the concept of rule of law envisioned by the framers of the law and bringing the same in reality while occupying a space in the Constitution.*
- 3. Although the equality is the faith and the aspiration of a citizenry in a democratic republic, yet its applicability has to be ensured with great caution and care, and not in an abstract manner. The equality amongst the equals is the hallmark of the doctrine of equality as unequals cannot be treated equally in the garb of the equality principles.*
- 4. The enlightening observation of Justice P.N. Bhagwati in Pradeep Jain Vrs. Union of India, (1984) 3 SCC 654 can be aptly applied that “equality must*



not remain mere idle incantation but it must become a living reality for the large masses of people.” We are conscious that the equality principles should not be applied with the mathematical precision but on practical inequalities permeating the sense of an equal treatment vis-a-vis the rule of law, which is paramount.

5. *On the broader concept of equality as embraced in the Constitution, let us examine the stand of the State in denying the claim of the respondents in the perspective of the fact that the persons standing on the same pedestal having bestowed with the regularization of their contractual services, whether the relief can be extended to the present writ petitioners/respondents.”*

7.14. With the above perspicuity of legal contours as discussed above through various judgments referred to above, there cannot be gainsaying that the concept of Article 14 of the Constitution of India would pervade to support the cause of the “lamb” (DLR employee) and the mighty model employer (lion) having exploited the petitioner who worked as Watchman for around 31 years since 1984 till his date of superannuation on 28.02.2015 cannot now shun its responsibility to provide social security measure¹. Though the petitioner was brought

¹ Article 38 of the Constitution of India reads as follows:
“38. State to secure a social order for the promotion of welfare of the people.—
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and



over to the Work-Charged Establishment, before 28.02.2015 he should have been brought to the Regular Establishment for the purpose of getting pensionary benefit. Glossing through the decisions it is not inept to say that on earlier occasions by dint of judgments/orders, as referred to above, the State Government has extended identical benefit to such DLR or NMR employees by bringing them to Regular Establishment notionally for the purpose grant of pensionary benefit.

Conclusion:

8. Before concluding, this Court may have regard to a view expressed by the Hon'ble Supreme Court of India with respect to grant of pension in favour of the employees having rendered long years of service to the employer. In *State of Gujarat Vrs. Talsibhai Dhanjibhai Patel, 2022 SCC OnLine SC 2004* it has been stated as follows:

"1. It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but

opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."



unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

2. *In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service.*
3. *Hence, the Special Leave Petition stands dismissed.*
4. *Pending application(s), if any, shall stand disposed of.”*

9. This Court is not oblivious of the provisions contained in Rule 18 of the Odisha Civil Services (Pension) Rules, 1992, which read as under:

“18. Conditions subject to which service qualifies.—

- (1) *Service does not qualify for pension unless it is rendered in a pensionable establishment/post.*
- (2) *The entire continuous temporary or officiating service under Government without interruption in the same post or any other post, shall count for the purpose of pension in respect of all categories of Government servants except in the following cases, namely:*
 - (i) *Period of service in a non-pensionable establishment;*
 - (ii) *Period of service in the work-charged establishment;*
 - (iii) *Period of service paid from contingencies;*
 - (iv) *Where the employee concerned resigns and is not again appointed to service under*



Government or is removed/dismitted from public service;

- (v) A probationer who is discharged from service for failure to pass the prescribed test or examination;*
 - (vi) Re-employed pensioner, Government servants engaged on contract and Government servants not in whole time employment of Government;*
 - (vii) Service paid from Local Fund or Trust Fund;*
 - (viii) Service in an office paid by fees whether levied by law or under authority of the Government or by Commission; and*
 - (ix) Service paid out of the grant in accordance with Law or Custom.*
- (3) Notwithstanding anything contained in clauses (i) and (ii) of sub-rule (2) a person who is initially appointed by the Government in a Work-Charged Establishment for a period of five years or more and is subsequently appointed to the same or another post in a temporary or substantive capacity in a pensionable establishment without interruption of duty, the period of service so rendered in work-charged establishment shall qualify for pension under this rule.*
- (4) Notwithstanding anything contained in sub-rule (1) Government, may, by general or special order, prescribe any class of service or post which were previously born under Work-Charged establishment or paid from contingencies to be pensionable.*



- (5) *Notwithstanding anything contained in sub-rules (1) and (2) in case of a Government servant belonging to Government of India or other State Government on his permanent transfer to the State Government the continuous service rendered by him under pensionable establishment of Government of India or any other State Government, as the case may be, shall count as qualifying service for pension.*
- (6) *Notwithstanding anything contained in clause (i) & (iii) of sub-rule (2), a person who is initially appointed in a job contract establishment and is subsequently brought over to the post created under regular/pensionable establishment, so much of his job contract service period shall be added to the period of his qualifying service in regular establishment and would render him eligible for pensionary benefits.”*

9.1. Though on the date of superannuation, *i.e.*, the petitioner, DLR employee since 1984 and a Work-Charged employee discharging duty of Watchman since 1984, considering that he worked for the employer for around 31 years uninterrupted service with a transfer to another place in the year 1991, this Court is of the considered opinion that such employee should have been regularized in the post which is of perennial nature. The observation of Division Bench of this Court in *Orissa Water Supply and Sewerage Board Vrs. Bijay Kumar Samal, &c. W.A. No.857 of 2024 etc., vide Judgment dated 30.07.2025* may be relevant:



“6.1. Appellant-Board is constituted under the provisions of the Orissa Water Supply & Sewerage Board Act, 1991; the Board discharges public functions with service rendered by Respondent-employees since a quarter century or so, is not in dispute. It is obvious that the work in question is perennial in nature and that these poor employees have been accomplishing the same with no complaint whatsoever. It is also not in dispute that the Board, being the employer in terms of Section 9 of the Act, has engaged the services of these respondents, there being no regular recruits, despite its recommendation to the State Government on several occasions. This being the position, the Appellant-Board, being an instrumentality of State under Article 12 of the Constitution of India, has to conduct itself as a Model Employer, vide Bhupendra Nath Hazarika Vrs. State of Assam, AIR 2013 SC 234. It hardly needs to be stated that there is Preambular Socialistic Pattern prescribed by the Constitution itself and therefore such an instrumentality cannot take up a stand that runs contrary to the same, apart from being bereft of elements of justice & fair play. After all, a Statutory Body like the Appellant-Board cannot run its ordained functions as East India Company of bygone era.

6.2. The vehement submission of learned panel counsel appearing for the Board that the very initial entry of the respondents to the service is illegal and therefore no regularization/absorption would have been granted in terms of Umadevi supra cannot be acceded to and reasons for this are many: Firstly, Section 9(1) of the Act says “The Board may appoint such officers and employees as it considers



necessary for the efficient performance of its duties and discharge of its functions against posts sanctioned by the State Government.” Secondly, it is specifically admitted in the statement of objections filed in the writ petitions that the Board has engaged the services of these respondents. It is not the contra case of the Board and it cannot be either, the battle lines having been drawn up both the sides having filed their pleadings. It need not be stated that an admission in the pleadings is a substantive piece of evidence, if not a sacrosanct one. Therefore, the ratio in Umadei supra would not come to the aid of Appellant-Board, initial entry being absolutely legal.

6.3. *Illegality is one thing and irregularity is another, even if arguably they are not polls asunder. At times, the difference between these two, sages of law like Fedric Pollock say, more often than not, is in degrees & not in kind. In a constitutionally ordained Welfare State its instrumentality like the Board cannot be permitted to contend that although it made the appointments in question, the same are marred by illegality, especially when they are not, for the reasons already discussed above. Here are employees who have been shading their sweat, if not blood, to the soil in the discharge of their functions for more than twenty five years. Firstly, a perpetrator of illegality, if at all these appointments are of the kind, cannot be permitted to take the advantage of its own illegal act. Secondly, whatever arguable illegality at the entry level of employment would diminish year by year and become nil at least after a quarter century, as a concession to the shortness of human life. One cannot dig the grave profitably, the dead having gone with the winds long*



ago once for all. Therefore, the entry of these respondents is at the most can be termed as irregular and therefore Umadevi cannot be chanted like mantra to defeat their legitimate expectation, if not right.”

9.2. Regard being had to the views expressed by different Courts *qua* the scope for regularization of the DLR/NMR employees and the entitlement of such employees for grant of pension *albeit* they were brought to the Work-Charged Establishment, it would be unjustified if the benefit of pension is not granted to the petitioner who worked on the basis of Daily Labour Roll. The opposite parties are required to bear in mind that the petitioner has worked for the employer since 1984 and subsequently was absorbed and brought over to the Work-Charged Establishment by Office Order dated 25.02.2012 after having put in around 28 years of service and allowed to be retired and be “relieved from Government service” on attaining age of superannuation on 28.02.2015 by Office Order dated 18.02.2015. As no objection is raised from the side of the opposite parties that Letter *vide* Memo No.1335, dated 21.03.1998 of the Superintending Engineer, Central Circle, Rural Works, Bhubaneswar (Annexure-9) reflects there were five numbers of Sweeper-*cum*-Night Watchman post lying vacant, and in this respect no plea is set up by the opposite parties in their counter affidavit that they have



filled up such vacant posts by the time of consideration the case of the petitioner for regularisation, there was thus no impediment for them to bring the petitioner over to the Regular/Pensionable Establishment rather than the Work-Charged Establishment. In all fairness of the things, it would be necessary to make observation that the opposite parties are required to consider bringing the petitioner to the Regular/Pensionable Establishment notionally for such period as is necessary for qualifying him to get the pension.

10. In view of the aforesaid discussion on facts as well as in law, the writ petition is disposed of with a direction to the opposite parties to consider the case of the petitioner in the light of consistent view expressed by different Courts in respect of similarly circumstanced employees and, in consideration of the observation made above, steps be taken to extend all the benefits and consequential benefits, as due and admissible to him in accordance with law.

10.1. Needless to say that the opposite parties shall act pragmatically by extending the pensionary benefits keeping in view the decisions referred to *supra*.

10.2. Entire exercise shall be taken up and concluded within a period of three months from the date of the receipt of



copy of this Judgment or on production of certified copy thereof by the petitioner, whichever is earlier.

- 11.** In the result, the writ petition is disposed of with the above observations and directions, but in the circumstances, there shall be no order as to costs. As a result of disposal of the writ petition, all pending Interlocutory Application(s) shall stand disposed of.

**(MURAHARI SRI RAMAN)
JUDGE**