



IN THE HIGH COURT OF ORISSA, CUTTACK

AFR

W.P.(C) No. 12623 of 2017

*(In the matter of an application under
Articles 226 & 227 of the Constitution of India)*

M. Srinivas

..... Petitioner

-Versus-

*1. State of Odisha, represented through
its Secretary in the Information Technology
Department, Bhubaneswar.*

*2. Odisha Computer Application Center
(OCAC), represented through its Chief
Executive Officer (Administrative),
Bhubaneswar.*

*3. Chairman, Odisha Computer Application
Center, Bhubaneswar.*

*4. General Manager, Odisha Computer
Application Center, Bhubaneswar. Opp. Parties*

Advocates appeared in this case

*For Petitioner : Mr. Sameer Kumar Das,
Advocate*

*For Opp. Party No.1 : Mr. Swayambhu Mishra
Addl. Standing Counsel*

*For Opp. Party Nos.2 to 4 : Mr. Satyabrata Mohanty,
Advocate*



CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 12.03.2026

Date of Judgment: 19.05.2026

S.K. Mishra, J. The present writ petition has been preferred assailing the legality and propriety of the Advertisement dated 17.06.2017 (Annexure-7) issued by the Odisha Computer Application Centre (for brevity, 'OCAC'), for filling up two posts of Software Engineer on regular basis against which the Petitioner has been working. The Petitioner further seeks for a direction for regularisation of his service as a Software Engineer under OCAC in the regular scale of pay along with all consequential service and financial benefits.

2. It is the case of the Petitioner, as detailed in the writ petition, that he was appointed as a Software Engineer pursuant to a public advertisement dated 22.06.2001 issued in the daily newspaper "Sambad" inviting applications for various posts, including Software Engineer, on contractual basis. After undergoing a due and transparent selection process, the Petitioner was selected and appointed vide office order dated 11.01.2002 (Annexure-1) on contractual basis with a consolidated remuneration and joined his duties on 18.01.2002 at Berhampur. Since then, the Petitioner has been uninterruptedly serving in OCAC. Although his appointment



was initially on contractual basis, the engagement was renewed from time to time through successive orders issued by the competent authority; the last of such extension was issued on 01.03.2017. As on the date of filing the Writ Petition, the Petitioner completed around 15 years of uninterrupted and satisfactory service in the post of Software Engineer.

2.1. Considering the autonomous nature of OCAC as an instrumentality of the State and the continuous requirement of technical personnel, the Authorities of OCAC themselves acknowledged the necessity of regularising the Petitioner's service. In this regard, the General Manager, OCAC, vide letter dated 13.01.2014 (Annexure-3), formally recommended to the State Government in the Information Technology Department for regularisation of service of the Petitioner against a sanctioned vacant post of Software Engineer, subject to approval of the Finance Department. Thereafter, in the Agenda dated 04.07.2014 placed before the 40th Governing Body Meeting (Annexure-4), the issue regarding regularisation of service of contractual employees, including the Petitioner, was taken up. In the meeting held on 24.07.2014, vide Agenda No.16 (Annexure-5), a decision was taken to regularise employees who had completed more than six years of service,



subject to verification of recruitment process and compliance with the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, shortly, 'ORV Act'. However, the Governing Body further suggested that employees with more than ten years of service should be given priority as they have crossed the permissible age for fresh recruitment.

2.2. Subsequently, in the Management Meeting held on 31.12.2015, it was again resolved to place the matter before the Governing Body for regularisation of service of the Petitioner and similarly situated employees, while continuing their contractual engagement in the meantime. Despite these repeated resolutions and recommendations, no formal order of regularisation was issued by the Authorities, though the Petitioner continued to discharge his duties uninterrupted, which clearly demonstrates his service to be permanent and indispensable of nature.

2.3. While the Petitioner was legitimately expecting regularisation in terms of the decisions taken by OCAC and the applicable Government Resolution dated 15.02.2014 providing for regularisation of contractual employees on completion of six years of service, the Management of OCAC issued the impugned



Advertisement dated 17.06.2017 inviting applications for filling up two posts of Software Engineer on regular basis. Hence, it has been stated that the said advertisement is per se illegal, arbitrary and unjust, as it seeks to fill up posts against which the Petitioner has been continuously working for years, without first considering his claim for regularisation. The Advertisement also prescribes an upper age limit of 45 years as on 31.12.2016 and altered eligibility criteria, which effectively debars the Petitioner from applying for the said post, thereby attempting to oust him from service after extracting his labour for more than two decades. After serving OCAC for such a prolonged period, he has crossed the age of fresh recruitment and termination at this stage would deprive him of his livelihood and cause irreparable injury to him and his dependent family members. It has been stated that, the action of the authorities in issuing the impugned advertisement, instead of regularising the Petitioner are thus arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, apart from being contrary to the doctrine of legitimate expectation.

3. Opposing to such prayer made in the writ petition, the Opposite Parties have filed two separate Counter Affidavits. The State of Odisha (Opposite Party No.1) has filed a Counter



stating that the writ petition is not maintainable in law or fact and is liable to be dismissed. It has been stated that OCAC is a distinct and autonomous body registered under the Societies Registration Act, 1860, governed by its own Bye-Laws and Service Rules, with an independent governing body. The Electronics and Information Technology Department acts only as an Administrative Department and has no control over OCAC's recruitment or staffing decisions.

3.1. It is the stand of the Opposite Party No.1 that although OCAC sought approval in the year 2014 for creation of regular posts and regularization of service of certain contractual employees, including the Petitioner, as OCAC is a distinct legal entity, being a Society, is governed by its own Service Rules and Bye-Laws, prescribing qualifications and recruitment procedures, is not required to seek the approval of the Administrative and Finance Department to regularize its own employees. Moreover, Information and Technology Department is only an Administrative Department and has no control over OCAC's recruitment and staffing decisions. It has further been stated that no approval or assurance was ever granted by the State Government. The recommendation for regularization is legally unsustainable, as the Petitioner's engagement was not



against any sanctioned post and was made without Finance Department's concurrence, and did not follow prescribed recruitment procedures or reservation norms, as required under the Government Resolution dated 17.09.2013.

3.2. It is further stand of the Opposite Party No.1 that the Petitioner was engaged purely on a contractual and temporary basis on consolidated remuneration, without any advertisement or due selection process, in violation of Articles 14 and 16 of the Constitution. Mere long tenure or possession of qualifications does not confer any right to regularization, and appointments made through back-door entry cannot be regularized.

3.3. Regarding the challenge to the Advertisement dated 17.06.2017, it has been stated that the Petitioner has no locus standi to challenge the same, as his own engagement is allegedly illegal. Accordingly, the State has denied all the allegations and has prayed for dismissal of the writ petition, allegedly being devoid of merit.

3.4. The Opposite Party Nos.2 to 4 (OCAC), in their Counter Affidavit, have also opposed the writ petition as not maintainable in law or on facts. It has been stated that the Petitioner was never appointed through direct recruitment under Rule-11 of the OCAC Service Rules, 1997, but was



engaged purely on contractual basis under Rule-17 on agreed terms, with clear undertakings that he would not claim regularization, regular pay, or service benefits. Having accepted such terms, the Petitioner is estopped from seeking regularization. OCAC, though receiving partial grant-in-aid from the Government, is a Society governed by its own Service Rules which prescribe qualifications and recruitment procedures.

3.5 A stand has been taken that the Petitioner was engaged in the year 2002 as a Software Engineer on temporary basis, project-based contractual terms for six months, extended from time to time with breaks, subject to performance and Governing Body's approval. He did not possess the prescribed qualification for the post, his qualification being only B.Com with PGDCA, did not meet the eligibility criteria under the OCAC Service Rules or the Advertisement dated 17.06.2017. His engagement was terminable at any stage without assigning reasons and did not confer any right to continuity or permanency.

3.6. It is further stand that the Advertisement dated 17.06.2017 was issued strictly in accordance with the Service Rules to fill up sanctioned posts through open recruitment. The allegation that it was issued to oust the Petitioner has been



denied. It has been stated that age relaxation upto 45 years was approved to enable contractual employees to participate. While proposals for restructuring and recruitment rules are under process, any creation of posts or regularization requires approval of the Administrative and Finance Departments. OCAC has facilitated participation of contractual employees in the recruitment process, and the Petitioner has no enforceable legal right to seek regularization. Accordingly, it has been stated that the writ petition deserves to be dismissed.

4. Apart from reiterating the grounds urged in the writ petition, in the Rejoinder Affidavit, the Petitioner denies and disputes the assertions made in the Counter Affidavit of Opposite Party No.1, stating that the plea of absence of a sanctioned post is misconceived, as such long continuance with payment from the Government exchequer necessarily implies sanctioned necessity.

4.1. It has further been stated that denial of regularization on such ground is untenable; particularly when an advertisement has been issued to fill up the same post on regular basis from the open market, ignoring the Petitioner's accrued rights. Refusal to regularize after extracting service for 23 years is asserted to be grossly exploitative and impermissible



in law. Moreover, in the Rejoinder to the Counter filed by Opposite Parties No. 2 to 4, the Petitioner has stated that OCAC is an instrumentality of the State, controlled and funded by the Electronics & Information Technology Department, Government of Odisha, discharging public functions and therefore amenable to writ jurisdiction with State Rules on regularization fully applicable to it.

4.2. The Petitioner disputes the reliance on Rule-17 of the OCAC Service Rules, 1997, stating that it does not bar regularization, especially when he was selected through due process and has rendered uninterrupted service since 2002. It is the stand of the Petitioner that the Odisha Group-B Post (Contractual Appointment) Rules, 2013 and G.A. Department Notification dated 17.01.2014 apply to OCAC and mandate regularization after six years of service. Having completed more than 18 years of continuous service (around 24 years of service as on date) against the vacant post of Software Engineer, denial of regularization is stated to be illegal.

4.3. It has been further stated that prescription of higher qualification in the Advertisement cannot defeat the Petitioner's accrued rights, particularly as he has since acquired the MCA qualification. It is also pointed out that OCAC itself had



recommended regularization of service of long-serving contractual employees, thereby contradicting its present stand. As the post of Software Engineer exists in the cadre strength with financial concurrence, no further approval is required. Accordingly, the Petitioner prays for quashing of the Advertisement dated 17.06.2017 and for his regularization with all consequential benefits.

5. Mr. Das, learned Counsel for the Petitioner, reiterating the facts detailed in the writ petition, submitted that the Petitioner has now completed about 24 years of uninterrupted service. The plea as to his engagement was project-based and subject to undertakings not to claim regular scale of pay, is factually incorrect and legally untenable. The very issuance of an advertisement to fill up two posts of Software Engineer demonstrates that the post is perennial and part of the regular cadre of OCAC, and not confined to any project. The learned Counsel for the Petitioner, relying on a recent judgment of this Court in W.P.(C) No. 7661 of 2020 and batch, decided on 24.10.2025, [**Manas Ranjan Samal (since dead) through his LRs & Ors. Vrs. State of Odisha & Ors.**], further submitted that the undertakings of the Petitioner, relied upon by the Opposite Parties, cannot operate as an estoppel



against his claim for regularization, as such undertakings are exploitative in nature. Even, reliance was placed on the judgment of the Supreme Court in **Chander Mohan Negi & Ors. Vrs. State of Himachal Pradesh & Ors.**, reported in 2020 (I) OLR (SC) 865, to substantiate the argument that long and continuous service in a project also entitles an employee to seek for regularization. The learned Counsel for the Petitioner further relied upon a catena of judgments of the Supreme Court and this Court to substantiate the stand that long and uninterrupted continuance in service, particularly, when initial appointment is made through a proper selection process and against the need of the Organization, entitles an employee to regularization. Reliance had been placed on the principles laid down in **State of Karnataka Vrs. M.L. Kesari**, reported in (2010) 9 SCC 947, **Amarkanta Rai Vrs. State of Bihar and others**, reported in (2015) 8 SCC 265, **Nihal Singh Vrs. State of Punjab**, reported in (2013) 14 SCC 65, and other recent judgments in **Jaggo Vrs. Union of India**, reported in 2024 SCC OnLine SC 3826, **Shripal and another Vrs. Nagar Nigam, Ghaziabad**, reported in 2025 SCC OnLine SC 221, **Dharam Singh & others Vrs. State of Uttar Pradesh and another**, reported in 2025 SCC OnLine SC 1735. It was argued



that even in cases where formal creation of posts is absent, the authorities are duty-bound to create posts and regularize employees, who have been allowed to continue for long periods and that prescription of higher qualification in the advertisement cannot defeat the accrued rights of the Petitioner, particularly as he has since acquired the MCA qualification.

6. Per Contra, learned State Counsel for the Opposite Party No.1 relied upon the judgments of the Supreme Court to support its stand in the Counter, including in ***State of Maharashtra and Another Vrs. Bhagwan & Others***, reported in 2022 LiveLaw (SC) 28, wherein it has been held that the employees of the autonomous bodies cannot claim as a matter of right the same service benefits at par with the Government employees. Relying on the judgment in ***State of Orissa & others Vrs. Mamata Mohanty***, reported in (2011) 3 SCC 436, it was argued that, an appointment made without any advertisement and any selection process / interview, does not meet the requirements of Article 14 and 16 of the Constitution of India, as the same deprives all other eligible candidates of submitting their candidatures and participating in the competition undertaken for filling up for such a post.



Relying on the judgment in ***Binod Kumar Gupta & Ors. Vrs. Ram Ashray Mahoto & Ors.***, reported in (2005) 4 SCC 209, it was argued that illegal appointments made without advertisement or proper selection process cannot be regularized. It was further argued that employees of autonomous bodies cannot claim parity with Government employees merely because such bodies are funded or administratively linked to the Government. It was also argued that internal office memoranda, recommendations, or resolutions of OCAC, which have not culminated in a final decision or statutory approval by the competent authority, do not confer any enforceable right upon the Petitioner to claim regularization or other service benefits.

7. Additionally Mr. Mohanty, learned Counsel for the Opposite Party Nos. 2 to 4 submitted that the judgments of the Supreme Court, referred to by the Petitioner, have no application to the present case as his engagement was purely contractual. Further, the Petitioner was never appointed through direct recruitment under Rule-11 of the OCAC Service Rules, 1997. Rather his engagement was purely on contractual basis in terms of Rule-17 of the OCAC Service Rules, 1997 on agreed terms, with clear undertakings that Petitioner would not



claim regularization, regular pay, or service benefits. Having accepted such terms, the Petitioner is estopped from seeking regularization.

8. In view of the submissions made by learned Counsel for the parties and after perusal of records so also the judgments cited by the parties, the following issues emerge to be dealt with and answered by this Court.

- I)** *Whether the initial engagement of the Petitioner, who was appointed on contractual basis, is illegal and /or irregular?*
- II)** *Whether, the Petitioner has any lawful right to claim regularization of his service in the post of Software Engineer in OCAC and consequential benefits, despite the terms of contractual engagement and his own undertaking executed on 26.11.2011 and subsequent undertakings executed each year till 2018, as at Annexure- B/2 Series to the Counter filed by OCAC ?*
- III)** *Whether, despite its own recommendations for regularization, the action of the Management of OCAC in not recognizing the Petitioner's continuous service of almost about 24 years as on date, for the purpose of regularization is arbitrary and violative of Article-14 & 16 of the Constitution of India?*
- IV)** *To what relief, if any, the Petitioner is entitled to?*

9. So far as Issue No.1, the Petitioner in paragraph-4 of the writ petition has specifically averred that in order to manage



the training and e-governance in the IT Sector, Staff have been engaged by OCAC, including Software Engineers. It has further been stated that, according to the requirement of OCAC an advertisement was issued in the daily newspaper “Sambad” dated 22.06.2001 to fill up different posts on contractual basis. After following due process of selection, the Petitioner was selected and appointed as a Software Engineer in OCAC vide Office Order/Letter No.55(15) dated 11.01.2002 on contractual basis with consolidated remuneration, pursuant to which he joined the said post at Berhampur on 18.01.2002.

9.1. In response to such averments, Opposite Party Nos.2 to 4(OCAC), in paragraph-8 of their Counter Affidavit, have admitted the said fact. Relevant portion from paragraph-8 of the Counter filed by OCAC is extracted below;-

“After obtaining due approval, an advertisement was published on 22.06.2001 for the posts of Software Engineer with the qualification of MCA / BE / B.Tech / B-Level / PGDCA. It is noteworthy to submit here that the petitioner along with 14 others was selected for the post and appointed vide office order no.55(15) dtd.11.01.2002. The qualification of the Petitioner was B.com with PGDCA and the engagement of the petitioner was purely on temporary basis for a period of six months which was extended thereafter subject to satisfactory performance and depending upon the requirement of the project.”

(Emphasis supplied)

9.2. However, as a stand has been taken by the OCAC in its Counter that sanction is awaiting at Government level for



permanent absorption of the Petitioner, being directed vide order dated 06.12.2024, the State (Opposite Party No.1) filed a Counter Affidavit on 18.07.2025. It has been stated in the Counter filed by the State that OCAC is a legal distinct entity registered under the Societies Registration Act, 1860 and is governed by its own By-Laws and Service Rules, i.e., Orissa Computer Application Centre Service Rules, 1997, shortly, 'the Rules, 1997', which clearly states that OCAC has its own Governing Body, cadre structure, and service Rules and the Electronics & Information Technology Department functions only as the Administrative Department, and it does not exercise day-to-day control over OCAC's staffing decisions. Despite taking such a stand, a stand has also been taken by the State in its Counter that mere possession of qualifications and long tenure under the contractual engagement do not confer any legal entitlement to regular appointment in public service. As per the settled principles of service law and constitutional mandate under Articles 14 & 16 of the Constitution of India, a public employment must be secured through an open, transparent and competitive recruitment process.

9.3. It has also been stated in the Counter filed by the State that the appointment of the Petitioner was allegedly made



without any advertisement, but only through an interview, which did not meet the test of consideration, for which the very appointment / initial engagement of the Petitioner is bad in the eye of law. Such a stand taken by the State (Opposite Party No.1) in its Counter is without any basis and contrary to the admission made by the Management of OCAC in its Counter, as has been extracted above. Hence, is not acceptable.

9.4. However, the Management of OCAC, in its Counter, has taken a stand that the appointment of the Petitioner was not a direct recruitment in terms of Rule 11 of the Rules, 1997. Rather, it was an appointment under Rule 17, wherein the appointment of the Petitioner was made and finalized on the terms and conditions as mutually agreed by OCAC and the Petitioner. Hence, it would be apt to reproduce below Rule 17 of the OCAC Service Rules, 1997 for ready reference:

“Recruitment by Deputation or Contract

17. Recruitment by Deputation or Contract :

(1) Notwithstanding anything contained in these rules, the appointing authority may fill up any post in the OCAC by (i) deputation from Government or other Sources or (ii) contractual appointment for specified periods.

(2) Recruitment by deputation shall be subject to such terms and conditions as may be agreed upon by the OCAC (the borrowing authority) and the lending authority, subject to the general norms formulated from time to time.

(3) Recruitment by contractual arrangements shall be finalised on such terms and conditions as may



mutually be agreed upon by the OCAC and the appointees concerned.”

(Emphasis supplied)

9.5. As is revealed from the said Rules extracted above, the Appointing Authority may fill up any post in OCAC by deputation from the Government or other sources, or by giving contractual appointments for specified periods. Admittedly, since the date of initial engagement of the Petitioner, there are two sanctioned posts of Software Engineers in OCAC. The Petitioner was engaged on a contractual basis through an open advertisement and on being selected following due selection process, as has been admitted by the Management of OCAC in paragraph-8 of the Counter Affidavit. As per the said advertisement published on 22.06.2001 for the posts of Software Engineer, the required qualification was MCA/BE/B.Tech/B-Level/PGDCA. Admittedly, the Petitioner had the requisite qualification of PGDCA in terms of the said Advertisement dated 22.06.2001 and such appointment of the Petitioner was made in terms Rule 17 of the OCAC Service Rules, 1997.

9.6. Admittedly, the said appointment of the Petitioner was in terms of Rule 17 of the OCAC Service Rules, 1997 with due approval of the Information Technology Department, which functions only as the Administrative Department and does not



exercise day-to-day control over OCAC's recruitment and staffing decisions. Further, as is revealed from the order dated 19.05.2001 passed by the Government of Odisha, Information and Technology Department regarding filling up project posts in OCAC, which was filed before this Court in form of a Memo by the learned Counsel for the OCAC on 12.12.2025, permission was sought for by the Management of OCAC from the IT Department of the Government of Odisha. Such permission was accorded to fill up various posts on a contractual basis, including the post of Software Engineers, pursuant to which an advertisement was published in the newspaper for selection and appointment to various posts.

9.7. Hence, this Court is of the view that neither the appointment of the Petitioner can be said to be illegal nor irregular, as has been incorrectly stated in the Counter filed by the State (Opposite Party No.1). Issue No.1 is answered accordingly.

10. So far as Issue Nos.2 and 3, being interlinked, are taken up together for the sake of brevity. Admittedly, as is revealed from the records, the Petitioner, who was selected following due procedure through an open advertisement, was offered contractual engagement in OCAC as Software Engineer



on a consolidated remuneration of Rs.10,000/- per month vide letter dated 11.01.2002 for the period of six months, which was extended from time to time due to the satisfactory performance of the Petitioner and the requirement of OCAC. Such consolidated remuneration was also enhanced from time to time, and the last such extension was for a period of one year with effect from 06.03.2018 to 28.02.2019 vide Office Order No.506 dated 28.02.2018/03.03.2018. As in most of the documents appended to the writ petition so also Counter filed by OCAC regarding contractual appointment of the Petitioner so also extension of the said appointment from time to time, there is a reference to the Finance Department Circular dated 31.12.2004, on being directed, the learned Counsel for the OCAC filed the said Circular of the Finance Department, wherefrom it is revealed that the Management of OCAC had to ensure execution of written undertakings in the model form, i.e., Annexure-A, which forms a part of the said Circular, which came into force almost three years after the appointment of the Petitioner.

10.1. Admittedly, though a contractual offer was given to the Petitioner for six months, due to his satisfactory performance, not only the said contractual period was extended



from time to time, but also his consolidated remuneration was enhanced periodically.

10.2. That apart, the General Manager (Admn.), OCAC, vide his Letter No.102 dated 13.01.2014 (Annexure-3), wrote to the Under Secretary to Government, Information & Technology Department, Govt. of Orissa, Bhubaneswar, recommending the case of the Petitioner so also another person, namely Amresh Mishra, for regularization. A request was made vide the said letter to seek for necessary approval from the Finance Department regarding their regularization against the vacant posts of Software Engineer. The contents of the said letter, being relevant, are extracted below:-

“Our Ref: No. OCAC-Admn-113/2007-102 Dated-13.01.2014.

From

*Shri Babaji Charan Das, OAS(S)
General Manager (Admn.)*

To

***The Under Secretary to Government,
Information Technology Department,
Govt. of Orissa, Bhubaneswar***

Sub: Regularization of staff engaged on contractual basis.

Sir,

*This is to inform you that representations are received from Shri Amresh Mishra, Shri M. Srinivas and Sri Sanjay Dey and Narendra Mallik, Driver who are working at OCAC on contractual basis and outsourcing basis in different projects of OCAC since year long. **They have requested to regularize their services at OCAC as per GA Department Notification No.26108 dated 17/09/2013. Their details of engagement are given in annexure-1.***

Presently two vacant posts of Software Engineer are available at OCAC. Since Shri Amresh Mishra and Shri M.Srinivas are engaged for project work and



their qualifications are matching to the qualifications required for Software Engineer at OCAC, I would therefore request you to obtain approval of Finance Department regarding their regularization against these vacant posts. Further, you are requested to move Finance Department to create one post of Project Asst. (for Shri Sanjay Dey) in IFITP Cell to carry out the work of IFITP Cell smoothly and one post of Driver in OCAC to meet the exigency.”

Yours faithfully,
Sd/-
General Manager (Admn.)

(Emphasis supplied)

10.3. Contents of paragraph (b) from the Annexure-I to the said letter dated 13.01.2014 (Annexure-3), being relevant, are extracted below:-

“b. Shri M. Srinivas: During the year 2001, IT Department in its letter No.596 dated 19/05/2001 had permitted OCAC to engage 40 nos. of the Project Professionals viz: Deputy Manager, Project Manager and Software Engineers on contract basis. Applications were invited for recruitment of professionals through open advertisement. A written test and interview was conducted by the Recruitment Committee for engagement of the above staff. Sri. M. Srinivas was selected as Software Engineer by the Recruitment Committee and engaged at OCAC initial for a period of six months on a consolidated amount of Rs. 10,000/- per month after due approval of Chief Executive. Since then he has been managing the work of Facility Centre at Berhampur and the period of engagement extended on the basis of review of performance and as per the requirement of OCAC and now he is in charge of Facility Centre, Berhampur.”

(Emphasis supplied)

10.4. Further, Agenda No.16, which was placed in the proceedings before the 40th Governing Body Meeting of OCAC, held on 04.07.2014 (Annexure-4), being relevant, is reproduced below:-



“Agenda-16

Subject : Regularisation of Services of Contractual Staff and outsourcing staff who are working at OCAC for more than six years.

Due to shortage of manpower, OCAC has engaged 20 nos. of Technical and Non-technical staff on contractual and outsourcing basis to manage the day to day official work and different project work. Out of the 20 staff, the following staffs are serving for more than six years.

Sl. No.	Name	Designation	Date of Joining	Present Remuneration and other benefits if any	Total year of Service
1	Amaresh Mishra	Project Assistant	01/01/2000	Rs.15000/-	14+
2	M. Srinivas	Software Engineer	01/07/2002	Rs.15000/-	11+
3	Sanjaya Dey	Artist	27/11/2001	Rs.12000/-	12+
4	Abhiram Sahoo	Accounts Asst.	03/02/2004	Rs.12000/-	10+
5	Alok Dey	Project Asst.	12/02/2005	Rs.9000/-	9+

In the meantime, G.A Department vide Resolution No.4591 dtd. 15.02.2014 have clarified that on the date of satisfactory completion of 6 years of contractual service or from the date of publication of this Resolution, whichever is later, they shall be deemed to have been regularly appointed. A formal order of regular appointment shall be issued by the Appointing Authority.”

(Emphasis supplied)

10.5. So far as Governing Body’s observation in the proceeding of the 40th GB held on 24.07.2014, as at Annexure-5, being relevant, is extracted below:-

“AGENDA -16

Subject:Regularization of Services of Contractual Staff and outsourcing staff who are working at OCAC for more than six years.

The Governing Body observed that apart from completion of 6 years of continuous service, there are



some other conditions like engagement against sanctioned post, due recruitment process followed or not, ORV Act etc. in the GA Department circular. All the above conditions may be re-examined again and be placed before the next Governing Body.

However, the Governing Body suggested that since OCAC is finalizing its restructuring proposal, all these employees who have served more than 10 years in OCAC may be given priority/scope for lateral entry in the restructuring proposal since they have already crossed the required age limit and while providing continuous service to OCAC in all these years.”

(Emphasis supplied)

10.6. Similarly, relevant portion from the Proceedings held on 31.12.2015 for review of performance of the staff engaged on contractual basis, as at Annexure-6, being germane, is reproduced below;

*“Shri M. Srinivas has been engaged as Software Engineer in the Berhampur Facility Centre on contractual basis since year 2002. Berhampur Facility Centre is a Regional Center of OCAC in Southern Odisha. **Shri Srinivas has been engaged at Berhampur Facility Centre from the date of joining at OCAC and now continuing there. He has been successfully carrying out all the training programme and other services rendered by the Berhampur Facility Centre.***

*The Committee opined that since, the above three persons have been providing services to OCAC, for more than 12 years, **steps may be taken to apprise the GB for regularization of their services.”***

(Emphasis supplied)

10.7. The Government of Odisha, vide Resolution dated 17.09.2013 of the G.A & P.G Department, as at Annexure C/1, took a policy decision to regularize the services of existing contractual Group C and Group D employees, who are not



holding any post in contravention of any statutory Recruitment Rules made under the proviso to Article 309 of the Constitution of India or any executive instruction in absence of such rules. As per the said policy decision, regular appointment of the above categories of contractual employees shall be made on the date of completion of six years of service or from the date of publication of this Resolution, whichever is later, in the order in which their names appear in the gradation list prepared under para 1. The period of six years shall be counted from the date of contractual appointment prior to publication of the said Resolution. It was further resolved that, in case the person concerned has crossed the upper age limit for entry into Government service on the date of contractual appointment for the corresponding regular post, the appointing authority shall allow relaxation of upper age limit.

10.8. From the above extracts, it is amply clear that the Petitioner was duly recruited on contractual basis. That apart, OCAC has sought for approval of the State Government time and again for regularization of service of its contractual staff and the contractual tenure of six months was extended from time to time which reflects that, the initial selection of the Petitioner was made following due procedure against



sanctioned/vacant posts. That apart, there are vacancies of two permanent posts of Software Engineer to be filled, as is evident from the impugned Advertisement dated 17.06.2017 (Annexure-7).

10.09. Admittedly, despite such recommendation so also decisions of the Governing Body, the impugned advertisement was made to fill up the posts of Computer Engineers, thereby debarring the Petitioner for his absorption in the said sanctioned post, as he has already crossed the required age limit in terms of the said advertisement.

10.10. In a recent judgment in **Rasmita Mishra Vs. State of Odisha & Ors**, [W.P.(C) No.24653 of 2025 and batch, disposed of on 28.10.2025], relying on the case of **Chandra Mohan Negi** (supra), the coordinate Bench directed the concerned Department to regularize the services of the Petitioners against vacant posts of Assistant Executive Engineer, even though all the Petitioners were engaged on contractual basis under the BRGF with consolidated remuneration under a Scheme. Relying on the judgment in **Jaggo** (supra), **Dharam Singh** (supra), **Shripal** (supra), the coordinate Bench in **Manas Ranjan Samal** (supra), directed for regularization of the services of the Petitioners in different posts



under Biju Krushak Vikas Yojana Deep Bore Well Secha Karyakrama, who were engaged on contractual basis through a walk-in-interview as Junior Engineering (Mechanical). The learned coordinate Bench in **Manas Ranjan Samal** (*supra*) held as follows:-

“25. Therefore, only because the petitioners submitted the so-called undertakings cannot estoppel them from claiming regularisation. It need not be overemphasized that right to livelihood is a fundamental right guaranteed under Article 21 of the Constitution. So, to apply the principle of estoppel by brandishing the undertaking submitted by the petitioners would tantamount to violating their fundamental right under Article 21 of the Constitution. It goes without saying that as between the right under Article 21 and the so called undertaking, it is the former that would prevail.

26. This is a case of persons who have rendered apparently satisfactory work to the establishment for long periods of time without the pay attached to their counterparts in the regular establishment. If this is not exploitation, then what is? The State cannot deny such pay and create disparity among its employees. What the authorities have done by labelling petitioners as temporary employees is to create a class within a class inasmuch as two sets of employees, one regular and the other temporary, are engaged for the same work. While the former are handsomely paid, the latter are doled out meagre remuneration not commensurate with their labours for the State.

(Emphasis supplied)

10.11. So far as the stand of the State (Opposite Party No.1) so also Opposite Party Nos.2 to 4 (OCAC), regarding the contractual engagement of the Petitioner and undertakings executed by him from time to time, thereby debarring him from



claiming regularization under the Management of OCAC on the ground of such undertakings, admittedly such undertakings were obtained from the Petitioner from 2011 onwards in the prescribed form, i.e., Form No-A. The Supreme Court, in a recent Judgment in ***Bhola Nath vs. State of Jharkhand and Others***, reported in 2026 SCC OnLine SC 129, held as follows:

*“11.6. The Constitution Bench in *Bhola Nath v. Comm. Income Tax*, long ago clarified that fundamental rights guaranteed under the Constitution are incapable of waiver. Consequently, if the action of the respondent-State is found to be violative of Article 14 of the Constitution, the mere fact that the appellants’ engagement was governed by contractual terms and conditions cannot be construed as a waiver of their fundamental rights.*

Unconscionable Agreements- Contract between Lion and Lamb:

12. *In *Central Inland Water Transport Corpn. v. Brojo Nath Ganguly*, this Court acknowledged the increasing imbalance in the bargaining power of contracting parties. The Court held thus: -*

*“89. . . . We have a Constitution for our country. Our judges are bound by their oath to “uphold the Constitution and the laws”. The Constitution was enacted to secure to all the citizens of this country social and economic justice. **Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and***



unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

(emphasis laid)



Therefore, the Court has held that the Constitution obliges courts to advance social and economic justice and to give effect to the equality mandate under Article 14. Consequently, courts will neither enforce nor hesitate to invalidate contracts, or contractual clauses, that are unfair or unreasonable when entered into between parties with unequal bargaining power.

12.1. Relying on the aforesaid reasoning, another two-Judge Bench in *Pani Ram v. Union of India*, reiterated that the guarantee of equality under Article 14 extends even to situations where a person has no meaningful choice but to accept imposed contractual terms, however unfair or unreasonable they may be. Applying this principle to the facts before it, the Court observed thus: -

“23. As held by this Court, a right to equality guaranteed under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. We find that the said observations rightly apply to the facts of the present case. Can it be said that the mighty Union of India and an ordinary soldier, who having fought for the country and retired from Regular Army, seeking re-employment in the Territorial Army, have an equal bargaining power. We are therefore of the considered view that the reliance placed on the said document would also be of no assistance to the case of the respondents.”

(emphasis laid)

Therefore, it is clear that Courts are empowered to invalidate unconscionable elements of a contract where the parties lack the ability to exercise any real or meaningful choice in negotiating its terms. In the present case, the appellants were left with no alternative but to accept the conditions unilaterally prescribed by the



respondent-State in order to secure their livelihood and sustain a source of income. It would be entirely unrealistic to assume that, in such circumstances, an employee seeking temporary employment could meaningfully negotiate or assert a position against the overwhelming might of the State machinery.

12.2. *At this juncture, the analogy of apples and oranges serves as a useful reminder that certain relationships are inherently incapable of being assessed on an equal plane. A contract between the State and an employee stands on a similar footing. **The State, in such a relationship, assumes the role of a metaphorical lion, endowed with overwhelming authority, resources and bargaining strength, whereas the employee, who is yet an aspirant, is reduced to the position of a metaphorical lamb, possessing little real negotiating power. To suggest parity between the two, i.e. the lion and the lamb, would be to ignore the stark imbalance that defines the relationship.***

12.3. *Therefore, where a lion contracts with a lamb, the inequality is not incidental but structural, and it is precisely this disproportion that calls for judicial sensitivity. In such situations, the conscience of Constitutional Courts must inevitably tilt in favour of protecting the lamb. We have no hesitation in holding that Constitutional Courts are duty-bound to act to safeguard those who are vulnerable to exploitation, so that employees are not compelled to meekly submit to the demands of a vastly dominant contracting party like the State, but are instead assured that constitutional protections will intervene to prevent such exploitation.*

(Emphasis supplied)

10.12. So far as doctrine of legitimate expectation, it was further held vide the said judgment as follows:

Legitimate Expectation of the employees: -

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 v. Sunil Kumar Sharma*, 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.”

(emphasis laid)

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 v. Umadevi*, 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.”

(emphasis laid)

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.

(Emphasis supplied)

10.13. So far as limits on perpetual contractual engagements, it was held in **Bhola Nath** (supra) as follows:

Limits on Perpetual Contractual Engagements:

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 v. Union of India*, 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 v. Nagar Nigam and Vinod Kumar v. Union of India*, 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 v. State of U.P.*, 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.

(Emphasis supplied)

10.14. So far as the stand of the State regarding engagement of the Petitioner in project work, admittedly the Petitioner is continuing as such since the date of his initial engagement till date, i.e., for the last 24 years, in the same Office at Berhampur and managing the said work smoothly and his contractual period has been extended from time to time, the same being found satisfactorily, with pay hike.

10.15. So far as the stand of the Opposite Party Nos. 2 to 4 (OCAC), in its Counter Affidavit, is that OCAC is an Autonomous Body under the administrative control of the State Government. It has further been stated that OCAC repeatedly requested the Government for approval to regularise the service of the Petitioner and other contractual employees. However, no response has been received from the State Government as



against such request for regularisation till date. On the other hand, the State Government, in its Counter Affidavit, has taken a contrary stand stating that OCAC is a distinct legal entity. OCAC, being a Society governed by its own Service Rules and By-Laws, prescribing qualifications and recruitment procedures, is not required to seek approval of the Administrative and Finance Department to regularize its own employees, moreover, Information and Technology Department, which is only an Administrative Department and has no control over OCAC's recruitment and staffing decisions. Furthermore, the stand of the State-Opposite Party No.1 is that the Petitioner does not possess the prescribed qualification for the post of Software Engineer, his qualification being only B.Com with PGDCA, which does not meet the eligibility criteria under the OCAC Service Rules or the Advertisement dated 17.06.2017. Such a stand is misplaced, as in addition to B.Com with PGDCA, the Petitioner has acquired the MCA qualification since 2010, as at Annexure-8 of the writ petition. That apart, the Management of OCAC itself acknowledged due possession of educational qualification as per the advertisement and the Petitioner was appointed on "contractual basis" and thereafter, it sought approval from the Government for regularisation of his service.



11. From the discussions made above, so also materials on record and the settled position of law, as detailed above, this Court draws the following undisputed and irresistible conclusions:-

- i) OCAC is a distinct and Autonomous Body registered under the Societies Registration Act, 1860.
- ii) The Electronics and Information Technology Department of Government of Odisha acts only as an Administrative Department and has no control over OCAC's recruitment or staffing decisions.
- iii) OCAC, having an independent Governing Body, is governed by its own Bye-Laws and Service Rules, which prescribe qualifications and recruitment procedure.
- iv) It is not required to seek approval of the Administrative as well as Finance Department of the State Government to regularize its own employees, moreover, Information Technology Department, it being only an Administrative



Department having no control over OCAC's recruitment and staffing decisions.

- v) Still OCAC, vide its letter dated 12.12.2000 and 30.01.2021, sought for permission of the Government of Odisha, Information Technology Department to fill up the project posts in OCAC on contractual basis.
- vi) Permission was accorded by the Government of Odisha, Information Technology Department vide letter No.596 dated 19th May, 2001 to fill up the project posts in OCAC on contractual basis maximum for one year.
- vii) Pursuant to such permission, an open advertisement was made in Odia daily newspaper "Sambad" on 22.06.2001 for appointment in various posts on contractual basis, including the posts of Software Engineer.
- viii) As the Petitioner was fulfilling the eligibility criteria as per the said advertisement dated 22.06.2001, including educational qualification, i.e., PGDCA, he applied for the said post of Software Engineer.



- ix) Being selected in a selection process, the Petitioner was appointed as Software Engineer vide office order dated 11.01.2002 for six months on a consolidated salary of Rs.10,000/- per month.
- x) Such appointment of the Petitioner and similarly placed others was made in terms of Rule-17 of the OCAC Service Rules, 1997, which permits the Management of OCAC to fill up any posts in the OCAC by way of deputation from Government or other sources or by way of contractual appointments for specified periods.
- xi) Though the appointment of the Petitioner was made for six months, the same was extended from time to time till the year 2018, indicating in the said orders that the Petitioner's services were found to be satisfactory. That apart, his consolidated salary was also enhanced from time to time.
- xii) During his contractual service period, the Petitioner, in addition to PGDCA, did MCA from



Madurai Kamaraj University in the year 2010 through distance education.

- xiii) Repeated recommendations were made by the Management of OCAC for regularization of service of the Petitioner, apart from taking a decision in the proceedings of its meeting held on 31.12.2015 regarding review performance of the staff engaged on contractual basis by the Committee to take necessary steps to apprise the Governing Body of OCAC for regularization of his service along with two others.
- xiv) Despite such recommendations, the issue regarding regularization of service of the Petitioner could not be materialized on the plea of awaiting sanction from the Government of Odisha, Electronics and Information Technology Department.
- xv) As admitted by the State-Opposite Party No.1 in its Counter, Information Technology Department, Government of Odisha is only an Administrative Department and has no control over OCAC's recruitment and staffing decision,



which is being governed by its own Service Rules and Bye-Laws, prescribing qualifications and recruitment procedure. Hence, OCAC is not required to seek the approval of Information Technology Department to regularise the service of the Petitioner.

- xvi) The Petitioner is working in OCAC for the last 24 years on contractual basis on a consolidated salary, which was being enhanced from time to time because of his satisfactory performance.
- xvii) The Berhampur Faculty Centre is the Regional Centre of OCAC in southern Odisha, where the Petitioner is working since the date of his joining in OCAC in the year 2002, and is successfully carrying out all the training programs and other services rendered by the Berhampur Faculty Centre, OCAC for the last 24 years.
- xviii) Though the impugned advertisement was made on 17.06.2017 to fill up two posts of Software Engineers and age relaxation was given to the persons working in OCAC on



contractual/outsourcing basis to be under 45 years as on 31.12.2016, the Petitioner's age was more than 45 years as on said date, thereby, compelling him to approach this Court seeking a direction for regularization of his service as against the vacant post of Software Engineer, with a further prayer to grant him all consequential service as well as financial benefits.

xix) Since the Petitioner's initial engagement on contractual basis was with prior approval of the Information Technology Department, following due procedure of selection and against regular vacancy and was in terms of Rule-17 of the OCAC Service Rules, 1997, such an appointment cannot be said to be illegal and/or irregular.

xx) As held in **Bhola Nath** (supra), even if the Petitioner executed undertakings in the prescribed form from time to time in terms of the Circular of the Finance Department dated 31.12.2004, which came into force much after



the appointment of the Petitioner, such contractual clause and undertakings, being unfair and unreasonable, are not enforceable and deserve to be declared as an invalid contract.

xxi) Referring to **Umadevi** (supra), as held in **Bhola Nath** (supra), the bar against invocation of the doctrine of legitimate expectation only applies to those temporary, contractual or casual employees, whose engagement was not preceded by a proper selection process in accordance with the extant rules. Hence, as detailed in the forgoing paragraphs, the repeated conduct of the employer-OCAC in expressing confidence in the performance of the Petitioner and consistently granting monetary upgradation and tenure extensions so also recommendations to regularize his service, who is working for the last 24 years on contractual basis, reasonably nature an expectation that the Petitioner's long and continuous service would receive further recognition and the



doctrine of legitimate expectation squarely applies to the case of Petitioner deserving a direction to regularise his service.

12. The factual backdrop, as detailed above, highlights a classic case of long-term contractual exploitation, wherein, despite admitted need, sanctioned posts and rendering uninterrupted service for more than two decades against a sanctioned post, so also repeated recommendations by OCAC itself for regularisation of service of the Petitioner, the Authorities have chosen to issue a fresh advertisement, thereby attempting to displace the Petitioner from his service in an arbitrary and illegal manner.

13. Law is well settled that, long-serving employees engaged on part-time/temporary contracts, who have performed essential, continuous duties for an extended period, are entitled to be considered for regularization, and their employment status and corresponding rights should be determined by the nature and substance of the work performed rather than the formal label of “temporary,” “casual,” or “part-time.” Hence, even if the Petitioner was appointed as a contractual employee and he executed undertakings from 2011 onwards till 2018, as detailed above, he has a right to pray for regularization of his service and



consequential benefits. Issue Nos. 2 and 3 are answered accordingly in favour of the Petitioner.

14. So far as Issue No-4 regarding reliefs, in view of the undisputed facts relating to the Petitioner's long, uninterrupted and satisfactory service of more than two decades against the post of Software Engineer; the admitted perennial and essential nature of the duties discharged by him; the repeated recommendations made by the OCAC Authorities themselves for his regularization, and applying the binding principles laid down by the Supreme Court in **Bhola Ram** (supra), **Jaggo** (supra), **Shripal** (supra) and **Dharam Singh** (supra), this Court is of the considered opinion that denial of regularisation to the Petitioner is arbitrary, exploitative and violative of Articles 14 and 16 of the Constitution of India.

15. Accordingly, the writ petition stands allowed and it is directed as follows:

- i. The impugned Advertisement dated 17.06.2017 (Annexure-7), so far as it relates to filling up the post of Software Engineers, against which the Petitioner has been continuously working for the last 24 years, is hereby quashed.



- ii. In view of the proceedings of the 40th GB Meeting of OCAC, as detailed in Paragraphs-10.4 and 10.5 above, the Petitioner shall stand permanently absorbed / regularized in the cadre of Software Engineer under Odisha Computer Application Centre (OCAC), as a regular employee, with retrospective effect from the date on which he completed six years of continuous service, as may be permissible under the applicable Government Resolutions.
- iii) For the purpose of effectuating the above direction, the Management of OCAC (Opposite Party Nos-2 to 4) shall absorb the Petitioner against a sanctioned post of Software Engineer, which are lying vacant, within a period of three months from the date of communication of certified copy this Judgment.
- iv) Upon such regularisation, the Petitioner shall be placed at no less than the minimum of the regular pay scale applicable to the post of Software Engineer with continuity of service for all service and retiral benefits, including seniority, pensionary benefits and other terminal dues.



- v) The Petitioner shall be entitled to notional fixation of pay from the date of retrospective absorption. However, actual monetary benefits shall be payable prospectively, unless otherwise admissible under law, while the entire period of service shall be counted for all consequential service benefits.
- vi) The Opposite Parties shall complete the entire exercise of regularisation, pay fixation and issuance of consequential orders within three months hence.
- vii) The Chief Executive Officer (Administrative), OCAC or the prevalent competent authority, shall file an Affidavit of compliance before this Court within three months from the date of communication of the certified copy this Judgment.

16. The writ petition stands disposed of with the aforesaid observations and directions. There shall be no order as to costs.

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S.K. MISHRA, J.