HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 02.12.2025
Pronounced on 11.12.2025
Uploaded on 11.12.2025

Whether the operative part or full judgment is pronounced: **Full**

CJ Court:

WP(C) No. 3402/2025

UT of J&K and others …Petitioner(s)/Appellant(s)

Through: Mrs. Monika Kohli, Sr. AAG

v/s

…. Respondent(s)

Som Raj

Through: Mr. Abirash Sharma, Advocate

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

'Oswal-J'

1. The respondent instituted SWP No. 1240/2002 in the year 2002, seeking directions to the petitioners (then respondents 1 to 3) to retrospectively regularize his services with effect from 01.09.1996, in terms of SRO 64 of 1994 dated March 24, 1994, and to release the unpaid wages payable to him. The said writ petition came to be disposed of in terms of order 14.11.2002, directing the respondents, petitioners 1 to 3 herein, to examine the record with regard to the engagement and continuation of the respondent as Daily Rated/Seasonal Labourer and if the respondent

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was found to have been engaged and continuously working as Daily Rated Worker, after the examination of the record, the petitioners 1 to 3 i.e. respondents therein, were directed to pass appropriate orders for regularization the services of the respondent in terms of SRO 64 of 1994.

2. Despite the respondent's repeated requests for regularization, the petitioners failed to take any action in the matter. Their only actions were internal communications regarding the collection of the respondent's service records, which were necessary to comply with the directions issued in the judgment dated November 14, 2002, in SWP No. 1240/2002. While the respondent continued working with the petitioners, his salary was stopped with effect from May 2018. Subsequent to this, and despite his further repeated requests, the petitioners again failed to take any substantive action beyond inter-departmental communications, which nonetheless unequivocally proved that the respondent was discharging his duties as a 'Daily Wager'.

3. Faced with this situation, the respondent filed a subsequent writ petition, WP(C) No. 2897/2019. The respondent sought the regularization of his services under SRO 64 of 1994 effective from October 8, 1998, the date he completed seven years of service as a Daily-Rated Worker, along with all consequential benefits. He also sought the release of his pending wages with effect from May 2018. The respondent asserted that the petitioners had willfully and intentionally disobeyed the directions of the learned Writ Court passed in SWP No. 1240/2002, and had simultaneously withheld his due wages since May 2018. It was asserted by the respondent that his case was squarely covered by the

judgment passed by the Coordinate Bench of this Court in "**State of J&K vs. Mushtaq Ahmad Sohail, (2012) 4 JKJ 1051**, wherein it was observed that if a casual labouer is continued for a fairly long spell, say two or three years, a presumption may arise that there is a regular need of his service.

4. The said writ petition came to be transferred to Central Administrative Tribunal, Jammu (for short, the Tribunal), and re-numbered as Transferred Application No. 2084/2020.

5. In their status report/response before the learned Tribunal, the petitioners stated that the pending wages for the period December 2019 to October 2020 could not be paid to the respondent because the relevant muster sheets were not available in the office record. The petitioners asserted that the muster sheets are the basic documents required to verify whether the respondent actually performed work during that time or not. They also confirmed that the respondent is now receiving his salary regularly.

6. The learned Tribunal vide judgment dated 11.03.2025 allowed the T.A preferred by the respondent and directed the petitioners to regularize the services of the respondent under SRO 64 of 1994 with all the consequential benefits with effect from 08.10.1998, when he completed 7 years of regular service and to release pending wages with effect from May 2018.

7. Feeling aggrieved, the petitioners have filed the instant petition challenging order dated 11.03.2025 on the grounds that the learned Tribunal has committed an error in directing retrospective regularization of the respondent with effect from 08.10.1998 and further that the wages

for the period December 2019 to October, 2020 could not be released due to non-availability of muster sheets, which are necessary to verify the attendance and wages. The petitioners further contend that the learned Tribunal failed to appreciate that the respondent was engaged as a 'Daily Wager' without undergoing any selection process or being appointed against a sanctioned post. Consequently, no right to regularization was vested in his favour. It is also urged by the appellants that the learned Tribunal did not consider the fact that the directions for regularization with consequential benefits after a lapse of nearly three decades would cause heavy financial burden on the public exchequer.

8. We have heard learned counsel for the parties and perused the record meticulously.

9. The record depicts that in the initial writ petition (subsequently transferred to the learned Tribunal), the respondent pleaded the following facts:

(i) **Initial Engagement:** He was first engaged as a Baildar on a daily-wage basis on July 10, 1989, initially for a three-month period.

(ii) **Disengagement/Accident:** He suffered the loss of an eye in an accident, leading to his subsequent disengagement.

(iii) **Re-engagement & Claim:** He was re-engaged on October 8, 1991.

Thereafter, his case for regularization under SRO 64 of 1994 was repeatedly recommended through various internal communications, but to no avail.

10. The petitioners admit the respondent's engagement as a Daily Wager in 1989 and his continuous service since then. Nevertheless, they contend that since the engagement was not pursuant to a selection process and was not against a sanctioned post, the respondent does not possess any right to regularization

11. We are astonished by the petitioners' stand; having extracted work from the respondent for over 34 years, they now advance this lame excuse to deny regularization. Under SRO 64 of 1994, a Daily Wager becomes eligible upon completing seven years of continuous service. The respondent was re-engaged on October 8, 1991, and has continued working without interruption since then. The petitioners, through internal communications, have only tossed the regularization claim of the respondent from one officer to another, without yielding any tangible outcome. Notably, the petitioners' defense is confined to the argument that sanctioned posts were not available, a mandatory requirement under SRO 64 of 1994; they have nowhere denied the fundamental eligibility or substantive claim of the respondent for regularization.

12. In terms of Rule 3 of SRO 64 of 1994, the Finance Department on receipt of proposal from any Administrative Department can approve the creation of posts for the purpose of regularization of daily rated workers or work charged employees. The petitioners, therefore, are legally estopped from denying the respondent's claim for regularization of his services on the basis of the absence of sanctioned posts.

13. In this context, it is apposite to take note of judgment of Hon'ble Supreme Court of India in case "**Jaggo v. Union of India and ors",**

2024 INSC 1034, wherein the Hon'ble Supreme Court of India has deprecated the practice of engaging workers on temporary basis for extended period when their roles are integral to functioning of the departments. The relevant part of judgment is extracted as under:

> **" In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale.** By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country
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> **(emphasis added)**

14. It would also be profitable to take note of the observations made by the Hon'ble Supreme Court of India in "**Dharam Singh v. State of U.P."**, **2025 SCC OnLine SC 1735.** The relevant paragraphs are extracted as under:

> **"11.** Furthermore, it must be clarified that the reliance placed by the High Court on *Umadevi* (Supra) to non-suit the appellants is misplaced. Unlike *Umadevi* (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. **It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, *Umadevi* (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order.Recent decisions of this Court in *Jaggo* v. *Union of India*[4] and in *Shripal* v. *Nagar Nigam, Ghaziabad*[5] have emphatically cautioned that *Umadevi* (Supra) cannot be deployed as a shield to justify exploitation through long-term "ad hocism", the use**

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

> *"**14.** The Respondent Employer places reliance on Umadevi (supra)[2] to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are "illegal" and those that are "irregular," the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.*
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> *15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade.*
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> *Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records-despite directions to do so-allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgment of this court in Jaggo v. Union of India[3] in the following paragraphs:*
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> *"22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair*

treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

……

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

• Misuse of "Temporary" Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

• Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

•Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

•Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

• Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances."

12. We also note the Commission's affidavit filed in 21.04.2025 pursuant to the order of this Court dated 27.03.2025, wherein reference has been made to a supervening reorganisation in 2024, whereby the U.P. Higher Education Services Commission was merged into the U.P. Education Services Selection Commission and, by a Government Order of 05.07.2024, certain Group-C posts were sanctioned while Class-IV/Driver requirements were proposed to be met through outsourcing. We must point out however, that supervening structural change cannot extinguish accrued claims or pending proceedings. The successor body steps into the shoes of its predecessor subject to liabilities and obligations arising from the prior regime. **More fundamentally, a later policy to outsource Class-IV/Driver functions cannot retrospectively validate earlier arbitrary refusals, nor can it be invoked to deny consideration to workers on whose continuous services the establishment relied for decades.**

13. As we have observed in both *Jaggo* (Supra) and *Shripal* (Supra), **outsourcing cannot become a convenient shield to perpetuate precariousness and to sidestep fair engagement practices where the work is inherently perennial. The Commission's further contention that the appellants are not "full-time" employees but continue only by virtue of interim orders also does not advance their case. That interim protection was granted precisely because of the long history of engagement and the pendency of the challenge to the State's refusals. It neither creates rights that did not exist nor erases entitlements that may arise upon a proper adjudication of the legality of those refusals**.

14. The learned Single Judge of the High Court also declined relief on the footing that the petitioners had not specifically assailed the subsequent decision dated 25.11.2003. However, that view overlooks that the writ petition squarely challenged the 11.11.1999 refusal as the High Court itself directed a fresh decision during pendency, and the later rejection was placed on record by the respondents. In such circumstances, we believe that the High Court was obliged to examine the legality of the State's stance in refusing sanction, whether in 1999 or upon

> reconsideration in 2003, rather than dispose of the matter on a mere technicality. **The Division Bench of the High Court compounded the error by affirming the dismissal without engaging with the principal challenge or the intervening material. The approach of both the Courts, in reducing the dispute to a mechanical enquiry about "rules" and "vacancy" while ignoring the core question of arbitrariness in the State's refusal to sanction posts despite perennial need and long service, cannot be sustained."**
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> **(emphasis added)**

15. The respondent's engagement is evident from the record; the Aadhaar-based verification format shows his engagement pursuant to the order dated October 5, 1991, and the Irrigation Department's list of Daily Wagers reflects his service period as 27 years and 7 months at that time. After the petitioners have extracted work from the respondent for a period exceeding 34 years, to deny his regularization would not only be in contravention of SRO 64 of 1994 but would also be grossly iniquitous. The Union Territory of J&K, being a welfare State, cannot be permitted to contend after three decades of service that the respondent was not entitled to regularization.

16. The petitioners' argument regarding financial implications asserts that granting the respondent relief would open the floodgates for similarly situated casual or daily-rated workers across the Union Territory. Nevertheless, the potential administrative and financial burden does not justify relieving the petitioners of their duty, as they have fundamentally failed to discharge their clear statutory obligations.

17. When the respondent filed the writ petition in 2019 (subsequently transferred to the learned Tribunal), he was 49 years of age. He has now

attained the age of 56 years, yet the petitioners continue to raise frivolous obstacles to the regularization of his services.

18. We have examined the judgment passed by the learned Tribunal and we do not find any illegality in the same warranting interference at our end. The petitioners are also bound to release the unpaid wages in favour of the respondent.

19. In view of what has been said and discussed hereinabove, the petition lacks merits and the same is, accordingly, **dismissed.**

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

JAMMU:
11.12.2025
Karam Chand

Whether the order is speaking: Yes
Whether the order is reportable: Yes