

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra-Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE

W.P. (C) 10 of 2023

Mrs. Bimla Devi,
Wife of Mr. Ramesh Chandra,
Resident of Chandmari, Gangtok,
East Sikkim-737101.

... **Petitioner**

Versus

- 1. The Chief Commissioner of CGST & CX,**
Kolkata Zone, GST Bhawan, 2nd Floor, 180 Shantipally,
Rajdanga Main Road, Kolkata - 700107.
- 2. The Commissioner of CGST & CX,**
GST Bhawan, Haren Mukherjee Road, Hakimpura,
Siliguri- 734001.
- 3. The Assistant Commissioner of CGST & CX,**
Gangtok Division,
Sikkim-737101.

... **Respondents**

Appearance:

Ms. K.D. Bhutia, Ms. Subaksha Pradhan and Mr. Lhandup Dorjee
Lepcha, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India with Ms.
Natasha Pradhan, Ms. Sittal Balmiki and Mr. Amit Kumar Sharma,
Advocates for the Respondents.

Date of Hearing : 08.04.2026
Date of Judgment : 08.04.2026
Date on which uploaded : 13.04.2026

J U D G M E N T

(Hon'ble Mr. Justice A. Muhamed Mustaque, C.J.)

The Petitioner, Mrs. Bimla Devi, worked on a voucher payment basis as a Safai Karmachari since July, 1984. She worked as a Safai Karamchari at the office of the Assistant Commissioner of CGST &

CX, Gangtok Division, Sikkim (Respondent No.03). Her engagement came to an end in May, 2023 (as submitted by the learned Counsel for the Petitioner). She has approached this Court by way of the present writ petition seeking the following reliefs:-

“(i) a writ, order or direction in nature of mandamus directing the respondents to regularize the service of the petitioner who has completed more than 36 years of service with retrospective effect.

(ii) A writ or order or direction or declaration that the petitioner is entitled for regularization of her service with retrospective effect i.e. 1994 under the scheme of “Grant of Temporary Status and Regularization Scheme of Government of India, 1993” with all consequential benefits.

(iii) A Writ or order or direction or declaration that the claim of the petitioner for appointment/regularization of service shall be duly considered with effect from the year 1997 and shall be given respective ranks and service benefits on her appointment and/or her services may be regularized with effect from the respective date when she had initially joined in service as full time farash cum safaiwala with effect from 01.09.1994 when other employees similarly circumstanced with her were regularized and/or from a reasonable date;

(iv) To grant all the consequential reliefs for which the petitioner is entitled for.

(v) A writ or order or direction or declaration that the seniority of the petitioner in the respective posts and ranks in the regular establishment shall be maintained by the respondents.

(vi) Cost of the proceedings;

(vii) Any other writ or order or direction or declaration as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. In the counter-affidavit filed by the Respondents, it is stated that the Petitioner was engaged w.e.f. 01.09.1994; however, there is no specific denial of the claim made by the Petitioner in the writ petition that she had been engaged from 1984 onwards, except for the contention that her claim of having worked since 1984 is not supported by any document.

3. The Petitioner claims that she ought to have been regularized in light of the Scheme introduced by the Central Government in the year 1993. The Scheme is called the *Casual Labourers (Grant of*

Temporary Status and Regularization) Scheme of Government of India, 1993.

4. The question is whether the Petitioner is entitled to regularization in light of the aforesaid Government Scheme. As seen from the Scheme as well as from the counter-affidavit, temporary status or regularization was granted as a one-time measure under the Scheme, 1993, only to those persons who were engaged prior to 1992 and had worked continuously for at least one year. It is an admitted fact that the Petitioner was engaged as a full-time Safaiwala from 01.09.1994 on a "no work no pay" basis (on voucher payment basis) in the Gangtok Range Office. It is also admitted that prior to being engaged as a full-time Safaiwala, she was engaged only as a part-time Safaiwala (04 hours a day). It is not discernible from the records produced that whether the Petitioner had worked prior to 1992 continuously for at least one year. However, the Petitioner made another claim based on a judgment of the Apex Court in ***Narendra Kumar Tiwari and others v. State of Jharkhand and others***¹.

5. It is further stated in the counter-affidavit that the Petitioner had never applied for regularization in light of the Apex Court's judgment in Narendra Kumar Tiwari case (*supra*). It is to be noted in Narendra Kumar Tiwari case (*supra*) at paragraph 6, the Apex Court has laid down the law as follows:-

"6.

11. The object behind the said direction in para 53 of *Umadevi (3)* is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi (3)* was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons

¹ (2018) 8 SCC 238.

on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi (3)*] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in *Umadevi (3)* or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in *Umadevi (3)* as a one-time measure.

.....”

6. The law is clear in this regard. An employer, particularly the State, cannot exploit labour by denying benefits to which they are entitled otherwise. When law is declared by the Apex Court, it is the responsibility of the employer to ensure that such directions are duly complied with.

7. The Petitioner belongs to poor strata of society and also belongs to a Scheduled Caste (SC) community. It cannot be expected from a lady, like the Petitioner, to take up the matter through legal means. Lack of knowledge and lack of access are impediments for such members of society. Apex Court in fact following the judgment in ***Secretary, State of Karnataka And Others v. Umadevi(3) And Others²***, ordered regularization of such employees that means the Petitioner is also entitled for the benefits of the judgment. It is to be noted that in *Umadevi(3)* case (*supra*), the Apex Court has laid down the law as follows:-

“.....

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa (supra)*, *R. N. Nanjundappa (supra)*, and *B. N. Nagrajan (supra)* and referred to in paragraph 15 above, of duly qualified persons in duly

² (2006) 4 SCC 1.

sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

.....”

8. It may not be possible for this Court to consider the claim for regularization in the light of the Scheme of the year 1993, in the absence of any material to hold that she was working from 1984 onwards. However, there is no denial of the fact that she was working as a full-time Safaiwala from 1994 onwards. Learned Deputy Solicitor General of India would argue that the Petitioner was engaged on a voucher payment basis for four hours a day and that she would receive wages only for the days she worked. Therefore, it is contended that she is not eligible for regularization. On the other hand, learned Counsel for the Petitioner submitted that the nature of engagement, duration, and intention of the employer are required to be considered in the light of the Umadevi(3) case (*supra*).

9. In ***Jaggo v. Union of India and Others***³, the Hon’ble Supreme Court had observed as follows:

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³ 2024 SCC OnLine SC 3826.

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.

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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.

26. While the judgment in *Uma Devi* (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi* (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment’s explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment’s spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

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

.....”

10. Therefore, considering the above judgment and the facts of the present case, in the light of *Umadevi(3)* case (*supra*), the Petitioner will be eligible for regularization, as she had completed 10 years of service as on the date of the judgment of the Apex Court in the *Umadevi(3)* case (*supra*).

11. As a result, I do not see any reason to deny the Petitioner the benefit of the above judgment merely on the ground that she had not applied for the same.

12. Accordingly, the writ petition succeeds.

13. The Petitioner will be entitled to regularization with effect from 10.04.2006, the date of the judgment in the Umadevi(3) case (*supra*).

14. All consequential benefits shall be paid to the Petitioner within a period of two months from the date of this judgment.

Chief Justice

Approved for Reporting: Yes
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