**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE JAI KUMAR PILLAI**

**WRIT PETITION No.17383 of 2019**

***RAMCHARAN***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

***Shri Atul Kumar Chakarvarti–Counsel for the petitioner.***

***Shri Atul Dwivedi– P.L. appearing on behalf of Advocate General***

***Shri Rajeev Mishra – Counsel for the respondents no. 4 and 5 /State.***

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**WRIT PETITION No. 2803 of 2022**

***RAMCHARAN***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

***Shri Atul Kumar Chakarvarti–Counsel for the petitioner.***

***Shri AtulDwivedi– P.L. appearing on behalf of Advocate General***

***Shri Rajeev Mishra - Counsel for the respondents no. 4 and 5 /State.***

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**Reserved on : 23/04/2026**

**Post on : 24 /04/2026**

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# ORDER

By way of this common judgment, this Court shall dispose of two connected writ petitions filed by the petitioner under Article 226 of the Constitution of India. The first petition (W.P. No. 17383 of 2019) seeks the issuance of a writ of mandamus directing the respondent authorities to regularize the services of the petitioner on the post of Peon/Process Server. The second petition (W.P. No. 2803 of 2022) challenges the illegal conduct of the respondent authorities, specifically Respondents No. 4 and 5, for their failure to make payment of the petitioner's monthly salary with effect from March 2021. Given the intertwined nature of the facts, grievances,

and the parties involved, both petitions are heard and decided together.

**Facts of the Case**

2. The petitioner was initially appointed as a daily rated employee in the year 1989 and has been continuously working under the control and supervision of the respondent authorities, specifically Respondent No. 4 (JilaSahkariKendriya Bank Maryadit, Raisen), on a daily wage basis. The petitioner has rendered more than 30 years of continuous service with an unblemished service record. The respondents have also regularly deducted Provident Fund from the petitioner's salary under the Employees' Provident Fund Scheme, 1952.

3. The petitioner’s services were extended from time to time, and his work was recognized as satisfactory, leading to the issuance of appreciation letters and experience certificates by competent authorities. Further, Respondent No. 4 forwarded the case of the petitioner for regularization to higher authorities on 10.12.2013. However, no final decision was taken, and the respondent authorities continued to pass the buck among themselves.

4. The State Government issued circulars dated 30.05.2013 and 07.10.2016 outlining policies for the regularization of daily wage

employees. In compliance with an order passed by this Court in W.P. No. 13215/17 dated 30.08.2017, similarly situated daily wage employees of other departments, namely RamdeenKewat, RamdasYadav, and Ashok Kumar Tiwari, were regularized. Seeking parity, the petitioner submitted umpteen representations, the last being on 25.06.2018, which went unheeded, prompting the filing of the first writ petition.

5. During the pendency of the first petition, this Court, vide order dated 12.11.2021 in I.A. No. 8332/2021, directed the parties to maintain status-quo as it existed on that date. However, the petitioner alleges that Respondents No. 4 and 5 began harassing and victimizing him to pressure him into withdrawing the petition. The Branch Manager forcibly restrained the petitioner from performing his duties, hid the Attendance Register to prevent him from signing it, and abruptly stopped the payment of his monthly salary from March 2021 onwards. This led the petitioner to file complaints with the Administrator-cum-Collector and the Superintendent of Police, Raisen, and subsequently institute the second writ petition for the release of his unpaid salary.

**Contentions of the Petitioner**

6. The petitioner contends that having worked continuously since 1989 for over three decades with a clean record, he is legally entitled to regularization as a permanent Class-IV employee in light of the State Government's circulars dated 30.05.2013 and 07.10.2016. The inaction of the respondents is arbitrary, malafide, and violative of Articles 14, 16, 19, and 21 of the Constitution of India.

7. The petitioner argues that he is being subjected to hostile discrimination, as similarly situated employees have already been regularized by the State pursuant to judicial orders. The deduction of Provident Fund establishes a clear employer-employee relationship and the perennial nature of the work.

8. Regarding the non-payment of salary, the petitioner submits that the actions of Respondents No. 4 and 5 in withholding his remuneration from March 2021 are vindictive and aimed at wreaking vengeance for approaching this Court. The petitioner asserts that the respondents deliberately created hurdles in his functioning, hid the attendance register, and willfully disobeyed the interim status-quo order dated 12.11.2021, reducing him and his family to a state of starvation.

**Contentions of the Respondents**

9. The respondents have raised a preliminary objection regarding maintainability, contending that the extra-ordinary jurisdiction under Article 226 cannot be invoked to seek regularization and the petitioner ought to have approached the Labour Court.

10. On merits, the respondents submit that the petitioner was engaged purely on a temporary basis for specific periods, with extensions granted according to requirement. It is contended that the post of Peon/Process Server is a Class-C post (Support Staff) which was declared a dying cadre via Notification dated 06.04.2016 (Rule 3.5 of the applicable Service Rules). Therefore, no regularization can be claimed against a non-existent post.

11. The respondents further rely on letters dated 04.10.2021 and 29.10.2021 issued by the Commissioner Cooperatives and Registrar Cooperative Societies, declaring extensions of temporary Process Servers unlawful and directing their termination upon expiry of the current term. They state the petitioner's last engagement order dated 13.07.2021 was only for 89 days, expiring on 10.10.2021.

12. Finally, the respondents contend that the petitioner absented himself from work after 20.09.2021. Therefore, when the status-quo

order was passed on 12.11.2021, the petitioner was already out of employment, as his term had ended on 10.10.2021 and was not renewed.

**Analysis and Conclusion**

13. Heard the rival submissions and perused the record. The core issues requiring adjudication are whether the petitioner is entitled to regularization after rendering over three decades of service, and whether the withholding of his salary from March 2021 by the respondents is legally sustainable. The scope of judicial review under Article 226 in employment matters, though circumscribed, extends to preventing manifest arbitrariness and ensuring that the State acts as a model employer. 14. The respondents have heavily relied upon the principles laid down by the Hon'ble Supreme Court in **State of Karnataka v. Umadevi (3), (2006) 4 SCC 1,**which reads as follows:-

> ***"43.*** *Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition*

*among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold*

*up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.*

***45.*** *While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing*

*of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.*

***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.*

***48.*** *It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held*

*by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."*

14. Moreover, the Hon'ble Supreme Court in **Jaggu v. Union of India, 2024 INSC 1034,** has also comprehensively dealt with this paradigm. It has been held that where an employee has been permitted to work for a continuously uninterrupted period spanning decades in this case, 30 years since 1989 the State cannot belatedly rely on procedural irregularities in the initial appointment to deny regularization.

15. The defense raised by the respondents stands clearly distinguishable on facts and law. The respondents argue that the post of Peon/Process Server was declared a "dying cadre" via the Notification dated 06.04.2016. However, this Court finds that the petitioner entered service in 1989 and completed his qualifying period for regularization long before the 2016 amendment came

into existence. Statutory amendments cannot apply retroactively to defeat the accrued rights of an employee who has been serving continuously for decades.

16. Furthermore, the contention that the petitioner was engaged merely on 89-day extensions is a classic example of unfair labor practice. The continuous deduction of Provident Fund since the inception of service definitively establishes the perennial nature of the work and shatters the illusion of a temporary "89-day" engagement. The State and its instrumentalities cannot extract work for 30 years and then unilaterally declare the employment as unlawful based on internal circulars of 2021.

17. The respondents have utterly failed to justify the discriminatory treatment meted out to the petitioner. The petitioner has successfully established that similarly situated employees, namely Ramdeen Kewat, Ramdas Yadav, and Ashok Kumar Tiwari, were regularized pursuant to Court orders. Denying the same relief to the petitioner without any cogent distinguishing factor is a textbook violation of Article 14 of the Constitution.

18. Regarding the stoppage of salary and the alleged absence of the petitioner after 20.09.2021, the record demonstrates that the respondent authorities actively obstructed the petitioner from

discharging his duties. The hiding of the attendance register and the issuance of threats were clear attempts to circumvent the judicial process. The status-quo order dated 12.11.2021 protected the petitioner's employment, and the respondents' interpretation that the status-quo meant the petitioner was "out of employment" is mischievous and rejected.

19. The non-payment of salary from March 2021 is thus found to be an arbitrary, vindictive, and colourable exercise of power by Respondents No. 4 and 5. An employee rendering service cannot be deprived of his livelihood, which forms an integral part of the right to life under Article 21 of the Constitution.

20. It is further pertinent to observe that, admittedly, there is no document placed on record by the respondents to demonstrate that the petitioner was ever formally terminated or that his services were legally put to an end. While the respondents heavily rely on the order dated 13.07.2021 to contend that the engagement was merely for 89 days and automatically expired on 10.10.2021, there is a conspicuous absence of any consequential formal order dispensing with his services. Furthermore, the respondents' assertion that the petitioner voluntarily absented himself from work after 20.09.2021 remains a bald allegation, completely unsupported by the issuance of any show-cause notice, memo, or disciplinary proceeding for

such alleged unauthorized absence. This glaring omission lends direct credence to the petitioner's specific pleading that he was forcibly restrained from signing the Attendance Register by the respondent authorities to artificially create a break in service. In the realm of service jurisprudence, an uninterrupted employment spanning over three decades cannot be presumed to have evaporated by the mere efflux of an arbitrary 89-day extension or unsubstantiated claims of absenteeism. This is especially true when this Court, having taken cognizance of the harassment faced by the petitioner, had explicitly directed the maintenance of status-quo vide order dated 12.11.2021. Therefore, the respondents' claim that the contract period had definitively ended without any formal documentary substantiation is both factually baseless and legally unsustainable.

21. In view of the foregoing analysis, the stand taken by the respondents in their reply is legally untenable and is accordingly rejected. The petitioner, having served with an unblemished record for more than 30 years, is legally entitled to regularization under the State's policies and on the ground of parity.

22. Consequently, both Writ Petition No. 17383 of 2019 and Writ Petition No. 2803 of 2022 are hereby **allowed**.

23. The respondent authorities are hereby directed to regularize the services of the petitioner on the post of Peon/Process Server as a permanent employee with all consequential benefits, treating his case at par with similarly situated employees who have already been granted such relief.

24. The respondents are further directed to calculate and release the entire arrears of unpaid salary of the petitioner with effect from March 2021 up till the date of actual payment.

25. The entire exercise, including the issuance of the regularization order and the disbursement of arrears of salary, shall be completed by the respondents within a period of **60 days** from the date of receipt of a certified copy of this order.

26. Pending applications, if any, shall be **disposed of** accordingly.

No order as to costs.

**(Jai Kumar Pillai)**
**Judge**

***Arun/-***