HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 926/2026
WP(C) no. 930/2026
WP(C) No.931/2026
WP(C) No. 1079/2026
WP(C) No. 1080/2026
WP© No. 1081/2026

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Whether judgment is full:Full

Pir Mohd Ishaq vs. University of Kashmir and others
Taizeem Qayoom vs. University of Kashmir and others
Obais Hamid Bhat vs. University of Kashmir and others
Pir Mohd Ishaq vs. University of Kashmir and others
Taizeem Qayoom vs. University of Kashmir and others
Obais Hamid Bhat vs. University of Kashmir and others

Petitioners(s)

Through: - Mr. Altaf Haqani Sr. Advocate with
Mr. Shakir Haqani Advocate.
Mr. Asif Wani Advocate.

…Respondent(s)

Through: - Mr. Asif Maqbool Advocate.

CORAM: **HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjeev Kumar J

WP(C) Nos. 926/2026, 930/2026 & 931/2026

1 In these three writ petitions, the petitioners have assailed a common order dated 20.04.2026 passed by the Central Administrative Tribunal, Srinagar Bench ("the Tribunal") in OA Nos. 303/2026, 313/2026, and 314/2026, respectively, whereby the Tribunal has declined the similar interim relief prayed

for by the petitioners in their respective OAs. The petitioners were engaged by the respondent-University vide order dated 09.01.2017 as Junior Engineers on what the respondent-University termed as “Hire and Fire” basis on a monthly consolidated wage of Rs. 15,000/-. They were allowed extensions in their temporary services from time to time and the last extension granted was up to 22.05.2026. While the petitioners were continuing on the basis of the last order of extension, the respondent-University issued Advertisement Notification No. 05/2026 dated 30.03.2026 inviting applications from eligible candidates to fill up various posts in the respondent-University, including one post of Junior Engineer (Electrical) and two posts of Junior Engineer (Civil). On seeing the writing on the wall and apprehending their ouster after 22.05.2026, all the three petitioners filed three separate OAs before the Tribunal and prayed for ad interim stay of the advertisement notification supra. All the three matters were taken up together by the Tribunal and vide a composite order impugned in these petitions, the Tribunal declined to grant the interim stay prayed for by the petitioners. The impugned order declining stay is, on the face of it, a reasoned order passed after hearing both sides and upon placing reliance on the case law cited by either side. It is this composite order which is called in question by the petitioners by filing these writ petitions.

2 While the matter was being considered by this Court, it was found that having regard to the nature of controversy involved and the issues of law elaborately discussed and dealt with by the Tribunal, it was appropriate to send for the pending OAs from the Tribunal and take them up for consideration. As is noted in the interim order dated 29.04.2026 passed in the aforesaid writ petitions, learned counsel appearing for the parties agreed to the suggestion and submitted their no objection for adoption of such course. Accordingly, vide order dated 29.04.2026,

all the three OAs were sent for from the Tribunal and came to be listed for consideration on 12.05.2026. The aforesaid OAs sent for from the Tribunal were registered as WP(C) Nos. 1079/2026, 1080/2026, and 1081/2026 and were taken up together for final consideration.

WP(C) Nos. 1079/2026, 1080/2026 & 1081/2026

Factual Matrix:

3 The petitioner in WP(C) No. 1079/2026 holds a three-year diploma in Electrical Engineering from the State Board of Technical Education, which he qualified in the year 2009. He claims to have subsequently acquired a degree of Bachelor of Technology (Electrical) through Techno Global University. The petitioner in WP(C) No. 1080/2026 possesses a diploma in Civil Engineering from the State Board of Technical Education, which he claims to have obtained in the year 2012. Additionally, he claims to have acquired a degree in Bachelor of Technology from I.K. Gujral Punjab Technical University, Jalandhar, in the year 2016. The petitioner in WP(C) No. 1081/2026 is a degree holder in Civil Engineering from the University of Kashmir, which he claims to have qualified in the year 2013. Additionally, he claims to have acquired M.Tech in Civil Highway Engineering from Shri Ram Murti Institution of Engineering and Technology at Kurukshetra.

4 As already stated, all the three petitioners were engaged by the respondent-University as Junior Engineers on what the University termed as “Hire and Fire” basis on a monthly consolidated wage of Rs. 15,000/-. The engagement of the petitioners was extended from time to time. Even the monthly consolidated wages were revised and enhanced. By virtue of the last extension granted by the respondent-University vide order dated 21.11.2025, the engagement period of all

the three petitioners was extended till 22.05.2026. While the petitioners were continuing on the basis of the last order of extension, the respondent-University issued Advertisement Notification No. 05/2026 dated 30.03.2026 inviting applications to fill up one post of Junior Engineer (Electrical) and two posts of Junior Engineer (Civil) in the open merit category available in the Construction Division of the respondent-University. Apprehending that the persons selected pursuant to the selection process initiated in terms of the aforesaid advertisement notification would replace them and that they would not get further extension, the petitioners approached the Tribunal by way of three different OAs, i.e., OA Nos. 303/2026, 313/2026, and 314/2026, seeking, inter alia, a writ of certiorari for quashing Advertisement Notification No. 05/2026 dated 30.03.2026 and a writ of mandamus directing the respondent-University to take appropriate steps for regularisation of their services on the basis of past practice. For the reasons indicated above, these OAs filed by the petitioners before the Tribunal have been sent for and registered in this Court as WP(C) Nos. 1079/2026, 1080/2026, and 1081/2026.

5 Briefly put, the case set up by the petitioners is that they came to be engaged as Junior Engineers in the respondent-University vide order dated 09.01.2017 and have been serving the respondent-University for the last more than nine years. They possess the requisite qualification to hold the post of Junior Engineer and fulfil all other requirements of regular appointment. Going by the past practice of the University of making similar appointments on temporary basis and later regularising them, the petitioners claim to have acquired a right to be regularised. The impugned advertisement notification has been issued to deny them regularisation. The respondent-University has not been able to explain as to why their services were utilised for nine years and the posts held by them were not put

to regular selection process. It is on these premises, the petitioners have filed these petitions.

Submissions of Counsel for the petitioners

6 Mr. Altaf Haqani, learned Senior Counsel appearing for the petitioners would argue that the advertisement notification issued by the respondent-University is arbitrary and unfairly denies the petitioners' right of regularisation, which they claim to have acquired by virtue of continuous officiation on the posts for the last more than nine years. He would submit that the petitioners are not only appointed against clear vacancies but also satisfy all the requisite parameters of eligibility prescribed by the University for the post of Junior Engineer.It is vehemently argued by Mr. Haqani that the continuation of the petitioners on the posts held by them on consolidated wages was a voluntary act of the respondent-University and not on account of any intervention made by a Court of law. He would argue that the respondent-University cannot be allowed to indulge in exploitative practice of "hire and fire" and throw out the petitioners after having utilised their services for nine years on meagre wages. He would further submit that the engagement of the petitioners on consolidated basis made without conducting a proper selection process can only be termed as 'irregular', for the reason that the petitioners fulfil all other requirements of eligibility, including the qualifications prescribed for the posts.He places strong reliance upon the Constitution Bench judgment of the Supreme Court in ***Secretary, State of Karnataka v. Uma Devi (3) and others*, (2006) 4 SCC 1**, and the subsequent clarification and interpretation made by the Supreme Court in several later decisions. He would sum up his arguments by submitting that the petitioners, who have given the prime of their youth to the respondent-University, should not be thrown out at a stage when they have raised their families on the legitimate

expectation that the respondent-University would, with passage of time, regularise their services. The impugned advertisement notification issued by the respondent-University has come to them as a bolt from the blue. He would urge this Court to take a compassionate view in the matter and allow them to continue as Junior Engineers till they are regularised by the respondent-University keeping in view their long and satisfactory services rendered on a paltry consolidated amount.He also places reliance on the University Council decision dated 11.10.2013 and would submit that the said decision, as explained by the Division Bench of this Court in LPA (SWP) No. 90/2016, is applicable to Class-III posts including the post of Junior Engineer and, therefore, the petitioners would be entitled to the benefit of the said decision providing for regularisation of casual/contractual engagements made against various non-teaching positions in the respondent-University.

Submissions of learned counsel for the respondents.

7 *Per contra*, very short and brief submissions have been made by learned counsel for the respondents. He would argue that the initial engagement of the petitioners as Junior Engineers on payment of consolidated wages of Rs. 15,000/-, which were later raised to Rs. 20,000/- per month, was clearly made on the principle of "hire and fire". He would argue that the term "hire and fire" was used by the respondent-University to convey to the petitioners unequivocally that their services were temporary and could be dispensed with at any time, so that they do not unnecessarily build an expectation qua their continuation and regularisation.He would further argue that the engagement of the petitioners, who may be fulfilling the eligibility qualification to hold the posts of Junior Engineers, was made without any advertisement notification and without any selection process worth the name conducted by the respondent-University. He would term

these engagements as having been made purely on the principle of pick and choose and *per se* backdoor.It is argued that such appointments, which are in clear violation of the principles of equality and equal opportunity envisaged under Articles 14 and 16 of the Constitution, cannot be ratified or approved by conferring upon the incumbents a right of regularisation. He would argue that the case law on the subject does not support the proposition propounded by learned counsel for the petitioners.He would wrap up his arguments by submitting that the respondent-University is well within its right to make regular selections by putting the posts to open advertisement so that all eligible candidates are afforded an opportunity to apply and compete. The petitioners, who claim to be eligible to hold the posts, are also welcome to participate in the selection process. He would submit that the petitioners cannot run away from the competition and seek their backdoor appointments regularised through intervention of the Court.

8 Regarding the University Council decision dated 11.12.2013, learned counsel for the respondents, would submit that the aforesaid policy was applicable to the casual/contractual engagements made against various teaching positions in the respondent-University who were in position as on the date of the University Council decision and fulfilled the requirements laid down in the said decision and the roadmap formulated by the Financial Advisor vide his communication dated 20.08.2013.

Discussion and analysis:

9 Heard learned counsel for the parties and perused the material on record.

10 India is a sovereign democracy governed by the Rule of law. Unlike other parliamentary democracies, we have a constitutional supremacy in our country. The constitutional provisions which form the essential features and basic

structure of the Constitution cannot be amended by the Parliament even if it is unanimous in its opinion. The Preamble of the Constitution of India declares: "WE, THE PEOPLE OF INDIA" having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens inter alia EQUALITY OF STATUS AND OF OPORTUNITY…. On the similar lines is the Preamble of the State Constitution. The preamble to the Constitution can be divided into following three parts:

> *(a).The people of India in their constituent Assembly adopted, enacted and gave to themselves a fundamental document of governance known as the Constitution of India;*
>
> *(b)The people of India solemnly resolved to constitute India into a sovereign socialist secular democratic republic;*
>
> *© The people of India solemnly resolved to secure to all its citizens four objectives i.e, Justice; social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of a opportunity and to promote among them all and lastly fraternity assuring the dignity of the individual; and unity and integrity of the nation.*

11 The words "justice, liberty, equality and fraternity" are the words of passion and power. Amongst four objectives resolved by the people of India, to be achieved, the third objective i.e 'equality of status and opportunity' is soul of our Constitution. The equality has two aspects, negative and positive. The equality can be achieved to some extent by removing inequality, but the equality of status and opportunity, used absolutely, as they are in the preamble, cannot be realised because the same mean more than the removal of inequality. Opportunity is partly a matter of chance, partly a matter of capacity to seize the opportunity, should it come. The third objective laid down in the preamble has been sought to be achieved through Articles 14 and 16 of the Constitution contained in part-III of the Constitution of India dealing with fundamental rights.

12 Article 14 of the Constitution of India is a general Article on equality and does not only provide for equality of status and opportunity, but it also

provides that State shall not deny to any person equality before law or the equal protection of laws. To some extent, these provisions help to secure equality of status and opportunity, but the doctrine of classification makes large inroads into the concept of equality of status and opportunity. Articles 14, 15 & 16 of Constitution of India are correlated and spell out vividly the concept of equality embodied in these Articles. Undoubtedly, the concept of equality envisaged in Articles 14, 15& 16 of the Constitution is a founding faith of our Constitution and indeed a pillar on which rests the foundation of our democratic republic. The true scope and ambit of Article 14 of the Constitution has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the extent and reach of Article 14 of the Constitution must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action.

13 It was for the first time in **E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3,** the Supreme Court gave a new dimension to Article 14 and pointed out that Article 14 has highly activist magnitude and it embodies a guarantee against arbitrariness. The Supreme Court observed that the basic principle which informs both Articles 14 and 16 of the Constitution is equality and inhibition against discrimination. It was affirmed that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. Article

16 of the Constitution of India is enacted to ensure the equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State, providing further that in the matter of employment under the State, no citizen shall be discriminated on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. The broad concept of equality envisaged under Article 14 of the Constitution which is general in nature has been put in place in the matter of employment under the State by virtue of provisions of Article 16 of the Constitution. Article 16(1) of the Constitution does not confer a right on a citizen to obtain public employment, but it does confer a right to an equality of opportunity for being considered for such employment. The Article does not exclude selective tests, nor does it preclude the laying down of qualifications for office.

14 The concept of equality as envisaged under Articles 14, 15 and 16 of the Constitution has been enunciated by the Hon'ble Supreme Court in a number of cases, starting from ***Kesavananda Bharati Sripadagalvaru, (1973) 4 SCC 1461 and others v. State of Kerala and another*** **and** ***Maneka Gandhi v. Union of India***, (**1978) 1 SCC 248.** Making appointments to Government service by way of direct recruitment, without inviting applications and providing opportunity to eligible candidates, amounts to denial of equal opportunity to persons similarly situated." The State being well aware of its solemn constitutional obligation to ensure to the citizens of this Country equality of status and of opportunity as envisaged in the preamble of the Constitution of India as well as State Constitution and explicit in Articles 14 and 16 of the Constitution which give a constitutional dictate to the State not to deny to any person equality before law and to ensure that there is equality of opportunity to all citizens in the matters relating to employment or appointment to any office under the State, has been consistently acting in a manner which is tantamount to denial of such equality of status or equality of

opportunity. Permitting the State to make ad hoc and temporary appointments by adopting a 'pick-and-choose' method, without issuing advertisement notifications or conducting competitive examinations, and then introducing a policy of regularisation, is nothing short of a fraud on the Constitution. The successive Governments in the State of Jammu and Kashmir, now the Union Territory of Jammu and Kashmir, and their functionaries and instrumentalities, have consistently adopted a unique modus operandi to deny citizens their right to equality and equal opportunity in matters of employment. The modus operandi adopted by the successive Governments for achieving cheap political motives is to first recruit handpicked candidates on account of their political affiliations and proximities and then engage them on ad hoc, contractual, temporary and daily wage basis on the pretext that such arrangements are required to be made to meet the exigencies and the emergent situations. These persons are continued from time to time till the Government comes up with a policy of regularization of the services of such persons. These persons are regularized in Government service either by issuing executive orders, statutory rules, or even by legislative enactments. Whatever be the mode adopted by the Government to regularize these temporary, ad hoc, contractual and daily wage employees, picked up arbitrarily other than by holding a fair process of selection and providing fair opportunity to the eligible candidates to compete, is nothing short of fraud on the Constitution. By such acts and omissions, the State has virtually rendered the provisions of Articles 14 and 16 of our solemn document known as the Constitution of India, redundant and a dead letter.

15 We would not like to trace out the history of the Government measures aimed at regularising the backdoor appointments, but to name a few, the J&K Daily Rated Workers and Work Charged Employees Regularization Rules,

1994 issued vide SRO 64 of 1994 provided for regularisation of all daily wagers who had completed seven years' continuous service on the appointed date by creating equal number of posts. To the similar extent was Government Order No. 1285 of 2001 dated 06.11.2001 which provided for regularization of ad hoc appointees. Likewise, Government Order No. 1220-GAD of 1989 dated 11.09.1989 provided for regularisation of services of temporary and adhoc appointees appointed against substantive posts. The latest in the series is the J&K Civil Services (Special Provisions) Act, 2010 which also provided for wholesale regularisation of all temporary, adhoc and contractual employees who had been serving the State against substantive vacancies for the last seven years. All these executive orders, statutory rules and enactments were promulgated by the Government to provide permanent employment to their own handpicked people at the cost of those who were even deprived of an opportunity of being engaged in such capacity, i.e., temporary, adhoc, contractual or daily wager.We need to view the controversy raised in these petitions and analyse the arguments of Mr. Haqani in this perspective.

16 The issue of regularisation of daily wagers, contractual and temporary employees recruited by the various States and their instrumentalities has engaged the attention of this Court ever since the independence of this country and adoption of the Constitution of India. The issue was, however, discussed, debated and elaborately dealt with in the Constitution Bench judgment of the Supreme Court in **Uma Devi (3) (**supra**).** Noticing the cleavage in the decisions rendered by the Benches of different strength, a two-Judge Bench of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs Uma Devi, (1990) 2 SCC 396**, referred the matter to a Bench of three Judges to resolve the conflict of opinions. However, when the matter came up before the three-Judge Bench, the Bench in turn was of

the opinion that the matter required consideration by a Constitution Bench in view of the conflict of various decisions rendered by the three-Judge Benches. This is how the matter was placed before the Constitution Bench which rendered its judgment in **Uma Devi (3).**

17 The Constitution Bench begins its judgment by stating at the outset that the public employment in a sovereign socialist secular democratic republic has to be as set down by the Constitution and the laws made thereunder and our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of procedure established in that behalf. Equality of opportunity is the hallmark. The Constitution has also provided for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of constitutional scheme (para 2 of the judgment).

18 Equally important are the observations of the Supreme Court in paras (4) and (5) which, for facility of reference, are set out below:

> "4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing

> the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.
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> 5.This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.".

19 The Supreme Court analysed its various decisions on the point rendered in **Ashwani Kumar and Ors. Vs. State of Bihar and Ors., 1997 (2) SCC 1, State of Haryana and Ors vs., Piara Singh and Ors. 1992 (4) SCC 118, Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and Ors. Vs. State of Karnataka and Ors., 1990 (2) SCC 396, State of Himachal Pradesh vs. Suresh Kumar Verma and Anr., AIR 1996 SC 1565, State of Punjab vs. Surinder Kumar and Ors., AIR 1992 SC 1593, and B.N. Nagarajan**

and Ors. Vs. State of Karnataka and Ors., 1979 (4) SCC 507 and numerous others and arrived at its conclusions thus:

> 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. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, 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 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 regularized or made permanent, courts are swayed by the fact that the concerned person 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 eyes open. It may be true that he is not in a position to bargain -- not at arms 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 succor 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 of India.

46. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485). There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

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 recognized 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 concerned cases, 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 concerned department 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.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The

> rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.".

20 From the Constitution Bench decision in **Uma Devi (3**), it is now the trite law that the appointments made without following the due process or the rules for appointment do not confer any right on the appointees and the Courts cannot direct their absorption or regularisation or re-engagement or making them permanent. The High Courts acting under Article 226 of the Constitution must not, therefore, ordinarily issue directions for absorption, regularisation or permanent continuance unless the recruitment itself is made regularly and in terms of the constitutional scheme. Merely because an employee has continued for long would not entitle him as a matter of right to seek his permanent absorption in the service. The wide powers conferred on the High Courts under Article 226 of the Constitution are not intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution.The Supreme Court has virtually warned the Courts of their tendency, in the name of social justice, to issue orders preventing regular selection and recruitment at the instance of such persons who have gained their entry in service through illegitimate means

and without facing any competition or process of selection. As is rightly pointed out by the Supreme Court that when a Constitutional Court is approached for relief by way of a writ in such cases, a question must necessarily be asked to such person whether he had any legal right to be enforced. Considered in the light of the very constitutional scheme, it cannot be said that a temporary, contractual, casual or daily wage employee engaged otherwise than by a proper selection process conducted in adherence to Articles 14 and 16 of the Constitution could claim a legal right to be absorbed permanently.

21 While considering the matter of thousands of such daily wage, contractual and adhoc workers, the Supreme Court carved out a one-time exception which is set out in para 53 of **Uma Devi (3).** Para 53 reads thus:

> "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. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly 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 subjudice, 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".

22 From a plain reading of para 53 (supra), it is abundantly clear that the Supreme Court took note of the fact that some of the employees working in such capacities had continued to work for ten years or more but without the intervention of the orders of the Courts or Tribunals and, therefore, they may have to be considered for regularisation as a one-time measure. It is in this background a direction was issued to the Union of India, the State Governments and their instrumentalities to take steps to regularise, as a one-time measure, the services of such irregularly appointed daily wagers, consolidated, adhoc and temporary workers who had rendered services of ten years or more in duly sanctioned posts without the intervention of the Courts.

23 Indisputably, the appointments of the persons made without due process of selection were termed as 'irregular appointments' provided the appointees were fulfilling all the eligibility requirements of appointment, viz., the age and qualification etc. The appointments made otherwise than by advertisement and due process of selection and in adherence to the principle of equality and equal opportunity envisaged under Articles 14 and 16 of the Constitution were termed by the Supreme Court as irregular only for the purpose of conferring upon them the benefit of regularisation as a one-time measure. This benefit was available only to such irregular appointees who were in position as on the date of the judgment rendered by the Supreme Court in **Uma Devi (3)** and was not to be taken as a principle of law to be applied for future similar appointments.

24 It is, thus, beyond any cavil of doubt that any appointment to a post under the State made without adherence to the provisions of Articles 14 and 16 of the Constitution, as explained above, is null and void and cannot be treated as mere irregular to be left to be regularised by the State and its instrumentalities. The term "irregular appointments" used in **Uma Devi (3)** was in the context of employees

who were directed to be regularised by the Supreme Court as a one-time measure. One-time measure seems to have been interpreted in some of the subsequent judgments as an exception to the general principle of making appointments to the public service under the State by strictly adhering to the principle of equality and equal opportunity envisaged under Articles 14 and 16 of the Constitution.

25 In **State of Karnataka vs M.L. Kesari,** **(2010) 9 SCC 247,** a judgment relied upon by both the sides, the exception contained in para 53 of **Uma Devi (3)** was sought to be explained. Para 11 of the judgment is relevant and reads thus:

> "11.The object behind the said direction in para 53 of Umadevi is two- fold. 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 was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize 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 10.04.2006 (the date of decision in Umadevi) 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 regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi 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 as a one-time measure."
>
> (Emphasis supplied)

26 It is, thus, very clearly explained in **M.L. Kesari**'s case (supra) that the benefit of one-time exception carved out in para 53 of **Uma Devi (3)** was available to those irregular engagees who had put in more than ten years of continuous service without the protection of any interim orders of the Courts or

Tribunals as on 10.04.2006, i.e., the date of decision in **Uma Devi (3).** Close on the heels is the judgment of the Supreme Court in the case of **Madan Singh vs State of Haryana and others, 2026 INSC 379** wherein the Supreme Court has once again reiterated that regularisation of an adhoc, temporary, contractual or consolidated employee without advertisement and proper process of selection is arbitrary and violative of Articles 14 and 16 of the Constitution. The judgments rendered by the Supreme Court in the cases of **M.L. Kesari (supra)** and **Jaggo vs Union of India, 2024 INSC 1034**, have been considered and relied upon.

27 In the face of the Constitution Bench decision in **Uma Devi (3)** laying down the position of law unequivocally and the position clarified by the Supreme Court in the case of latest judgment of **Madan Singh** (supra), we need not go into the entire case law cited at bar by the learned counsel appearing for the parties. Suffice it to say that the law declared by the Constitution Bench of the Supreme Court in **Uma Devi (3)** prohibits and inhibits the State from coming up with the policy of regularisation of adhoc, temporary, consolidated and contractual employees engaged without advertisement notification and proper selection process conducted in strict adherence to the rule of equality and equal opportunity envisaged under Articles 14 and 16 of the Constitution. Equally, the Supreme Court has reiterated a trite principle of law that the constitutional Courts must not issue a writ of mandamus directing the State and its instrumentalities to regularise the services of such employees who can only be termed as backdoor entrants to the Government service at the cost of those who never got an opportunity to submit themselves to the selection process for such appointments.

28 Viewed thus, the prayer of the petitioners for seeking a writ of mandamus to the respondent-University to regularise their services and also for a writ of certiorari to quash the process of selection initiated by the respondent-

University vide Advertisement Notification No. 05/2026 dated 30.03.2026 for making regular appointments in adherence to the principle of equality and equal opportunity envisaged under Articles 14 and 16 cannot be granted. The petitioners cannot claim the enforcement of negative equality by citing the past precedent of regularisation of backdoor appointments by the University. The policy of regularisation framed by the University in the year 2013 on which also reliance was placed by Mr. Haqani to seek regularisation of services of the petitioners is, on the face of it, not applicable to the temporary engagements made in the year 2017. The policy has outlived its life and utility and cannot be treated as a perpetual source of regularisation of backdoor appointees in the respondent-University.

29 Viewed from any angle, we find no merit in these petitions and the same are, accordingly, dismissed. However, we would permit the petitioners, if otherwise eligible, to participate in the selection process by submitting their application forms. They shall also be entitled to age relaxation provided they were within age when they were initially engaged in the year 2017. In order to facilitate the petitioners to submit their application forms, fifteen days' time is granted from the date of this judgment.

(SANJAY PARIHAR) **(SANJEEV KUMAR)**
JUDGE **JUDGE**

Jammu
21.05.2026
Sanjeev

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