

# **Abhishek Mishra vs State Of U.P. Thru. Addl. Chief Secy. ... on 3 March, 2025**

**Author: Alok Mathur**

**Bench: Alok Mathur**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12735

Court No. - 6

Case :- WRIT - A No. - 7414 of 2022

Petitioner :- Abhishek Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Revenue, Lko. And 3 Others

Counsel for Petitioner :- Sanjay Misra, Neeranjana, Pratyush Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Sanjay Mishra, learned counsel for petitioner as well as learned Standing Counsel for the State and perused the material available on record.
2. It has been submitted by learned counsel for petitioner that father of the petitioner, Late Amar Nath Mishra was appointed on the post of Collection Amin on 19.02.1997.
3. The husband of the petitioner contentiously worked on the said post for 23 long years and died on 25.01.2022 while being in service. It has been submitted that during his service period of 23 years there were no complaints against him and he worked to the full satisfaction of his superiors and no

disciplinary proceedings were ever initiated against him. The father of the petitioner left behind his widow, two sons i.e., one son of 21 years and one second son of 9 years.

4. It is on the death of the husband of the petitioner that the petitioner has moved an application under the U.P. Recruitment of Dependant of Government Servant Dying in Harness Rules, 1974 seeking compassionate appointment considering the fact that the sole bread earner had died leaving the family in financial destitution.

5. It is when the application of the petitioner was not considered for appointment the petitioner was constraint to file a writ petition before this Court being Writ A No. 3487 of 2022, which was disposed of by this Court by order dated 31.05.2022 directing the respondent No. 2 to decide the representation expeditiously in two weeks. The Chief Information Commissioner i.e. respondent No. 2 has passed the impugned order dated 26.06.2022 rejecting the representation of the petitioner.

6. The only ground considered for rejection was that the father of the petitioner was appointed on the post of Collection Amin on 19.02.1997 without following any rules. It was further noticed that his services were purely temporary and could have been terminated by giving a notice as per the provision of Uttar Pradesh Temporary Government Servant (Termination of Service) Rules 1975.

7. It was stated that no procedure was followed while appointing him and accordingly for the same very reason, the petitioner cannot be granted benefit of the U.P. Recruitment of Dependant of Government Servant Dying in Harness Rules, 1974 and accordingly his representation was rejected.

8. Learned counsel for the petitioner on the other hand has submitted that the very fact that husband of the petitioner had worked contentiously for a period of 23 years which indicates that there were a permanent vacancy against which he was working and it is the negligence and callousness of the respondents who did not regularize his service even after continuously working for 23 years.

9. It is stated that the respondents cannot take any advantage of their own fault in light of the fact that relevant regularization rules were in place and the case of the petitioner could have been duly considered for regularization prior to his death but the respondents only exploiting the situation of poor employees continued to permit him to work on temporary basis for 23 years and it is for this reasons after his death they have denied the benefit of compassionate appointment to the petitioner.

10. He further submits that State being a model employer cannot exploit the situation of poor persons. He further submits that this aspect of the matter was duly considered by Hon'ble the Supreme Court in the case of Jaggo Vs. Union of India and Others, 2024 SCC OnLine SC 3826 where the supreme Court had held that if a person works uninterruptedly for more that period of 10 years even though his initial appoint was de hors the rules even then essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route. Relevant paragraphs of the said judgment are quoted as under:-

"10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements.

However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization.

In a recent judgement of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.<sup>5</sup>, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgement have been reproduced below:

"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case."

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."

11. Further reliance was placed in the case of Shripal and another Vs. Nagar Nigam, Ghaziabad, 2025 SCC OnLine SC 221, where the Hon'ble the Supreme court has relied with approval with the case of Jaggo (Supra) and observed as under:-

"15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. 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 judgement of this court in Jaggo v. Union of India in the following paragraphs:

"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 2024 SCC OnLine SC 3826 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. A perusal of the aforesaid observations of the Supreme Court leads to the irrefutable conclusion that rendering services for more than 10 years and beyond and in the present case is 23 years has rendered the petitioner liable, the services of husband of the petitioner liable to be regularised and in any case he does not lie to the respondents to say that merely because the initial appointment was irregular, they would deny the benefit of compassionate appointment to the petitioner.

13. In the impugned order, this Court finds that there has been a reiteration of the fact that the services of the petitioner were temporary and could have been dismissed by one month's notice. Even though such a provision does exist and it was open for the respondents to have invoked the said provision, had any occasion arisen in this regard but it seems that the husband of the petitioner worked sincerely and with due diligence due to which despite the fact that he was a temporary government servant, the respondents never invoked provisions of terminating his services by giving him one month's notice.

14. According this Court finds that after rendering 23 years of service, the husband of the petitioner was liable to be considered as a regular employee and all the benefits accrue to him should be granted on his death to the members of his family.

15. Accordingly, for the reasons aforesaid, the impugned order dated 26.06.2022 is set aside. The respondents are directed to consider the case of the petitioner for appointment treating the services of the father of the petitioner was in a regular employment of the Revenue Department.

16. Let the necessary orders in this regard be passed expeditiously, say, within a period of six week from the date a certified copy of this order is produced before him.

17. In view of the aforesaid observations / directions, the writ petition stands allowed.

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(Alok Mathur, J.) Order Date :- 3.3.2025 Virendra