

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,**  
**JABALPUR**

**1.CGIT/LC/R/55/2016**

**Present: P.K.Srivastava**

**H.J.S..(Retd)**

**Shri Anil Sen**  
**S/o Moti Lal Sen, R/o Motinagar,**  
**Ward No.25, Sagar (M.P)-470001**

**Workman**

**Versues**

1. The Commandant,  
Mahar Regimental Centre,  
Sagar (M.P)-470001
2. Karyavahak Station Staff Adhikari  
Administrative Officer,  
First Class, Station Headquarter,  
Sagar District Sagar (M.P.) 470001
3. M/s Talwar & Co.,  
Through! Its proprietor  
Mrs. Shobhana Talwar,  
R/o 5/21, Sadar Baazar Sagar (MP)

**Management**  
**.....(Leading Case...)**

**With 2. CGIT/LC/R/56/2016**

**Shri Jitendra Sen**  
**S/o Shri Thikaram Sen,**  
**R/o Village Ranipura, Semrahat,**  
**Sagar (M.P)-470001**

**Workman**

**Versues**

1. The Commandant,  
Mahar Regimental Centre,  
Sagar (M.P)-470001
2. Karyavahak Station Staff Adhikari  
Administrative Officer,  
First Class, Station Headquarter,  
Sagar District Sagar (M.P.) 470001
3. M/s Talwar & Co.,  
Through! Its proprietor  
Mrs. Shobhana Talwar,  
R/o 5/21, Sadar Baazar Sagar (MP)

**Management**

**3. CGIT/LC/R/57/2016**

**Shafeeq  
S/o Mohd. Rajjaq,  
R/o Bhainsa Naka, Sagar (M.P)-470001**

**Workman****Versues**

- 1. The Commandant,  
Mahar Regimental Centre,  
Sagar (M.P)-470001**
- 2. Karyavahak Station Staff Adhikari  
Administrative Officer,  
First Class, Station Headquarter,  
Sagar District Sagar (M.P.) 470001**
- 3. M/s Talwar & Co.,  
Through! Its proprietor  
Mrs. Shobhana Talwar,  
R/o 5/21, Sadar Baazar Sagar (MP)**

**Management****4.CGIT/LC/R/58/2016**

**Sh. Kamlesh Sen  
S/o Gopal Sen, 6, Aafatganj,  
Hardoula Chabutra Gali,  
Teh-Sagar, Sagar (M.P)-470001**

**Workman****Versues**

- 1. The Commandant,  
Mahar Regimental Centre,  
Sagar (M.P)-470001**
- 2. Karyavahak Station Staff Adhikari  
Administrative Officer,  
First Class, Station Headquarter,  
Sagar District Sagar (M.P.) 470001**
- 3. M/s Talwar & Co.,  
Through! Its proprietor  
Mrs. Shobhana Talwar,  
R/o 5/21, Sadar Baazar Sagar (MP)**

**Management****5.CGIT/LC/R/59/2016**

**Sh. Motilal Sen  
S/o Gulabchand Sen, R/o Ward No.25,  
Motinagar Ward, Sagar (M.P)-470001**

**Workman****Versues**

- 1. The Commandant,  
Mahar Regimental Centre,**

**Sagar (M.P)-470001**

- 2. Karyavahak Station Staff Adhikari  
Administrative Officer,  
First Class, Station Headquarter,  
Sagar District Sagar (M.P.) 470001**
- 3. M/s Talwar & Co.,  
Through! Its proprietor  
Mrs. Shobhana Talwar,  
R/o 5/21, Sadar Baazar Sagar (MP)**

**Management**

**6.CGIT/LC/R/60/2016**

**Sh Pran Singh Sen  
S/o Hazarilal Sen, R/o Ranipura,  
Semrahat, Sagar, Sagar (M.P)-470001**

**Workman**

**Versues**

- 1. The Commandant,  
Mahar Regimental Centre,  
Sagar (M.P)-470001**
- 2. Karyavahak Station Staff Adhikari  
Administrative Officer,  
First Class, Station Headquarter,  
Sagar District Sagar (M.P.) 470001**
- 3. M/s Talwar & Co.,  
Through! Its proprietor  
Mrs. Shobhana Talwar,  
R/o 5/21, Sadar Baazar Sagar (MP)**

**Management**

**7.CGIT/LC/R/61/2016**

**Sh. Sunil Sen S/o Motilal Sen,  
R/o Near Himmatbhai Namkeen Wala,  
Bahubali Colony, Sagar (M.P)-470001**

**Workman**

**Versues**

- 1. The Commandant,  
Mahar Regimental Centre,  
Sagar (M.P)-470001**
- 2. Karyavahak Station Staff Adhikari  
Administrative Officer,  
First Class, Station Headquarter,  
Sagar District Sagar (M.P.) 470001**
- 3. M/s Talwar & Co.,  
Through! Its proprietor  
Mrs. Shobhana Talwar,  
R/o 5/21, Sadar Baazar Sagar (MP)**

Management

**8.CGIT/LC/R/62/2016**

**Sh. Sandeep Sen**  
**S/o Motilal Sen, R/o Bhandari Road No.3,**  
**Moti Nagar, Sagar (M.P)-470001**

Workman

**Versues**

1. The Commandant,  
 Mahar Regimental Centre,  
 Sagar (M.P)-470001
2. Karyavahak Station Staff Adhikari  
 Administrative Officer,  
 First Class, Station Headquarter,  
 Sagar District Sagar (M.P.) 470001
3. M/s Talwar & Co.,  
 Through! Its proprietor  
 Mrs. Shobhana Talwar,  
 R/o 5/21, Sadar Baazar Sagar (MP)

Management

**9.CGIT/LC/R/63/2016**

**Sh. Pappu Sen**  
**S/o Balram Sen, R/o 8,**  
**Behind Police Line, Laxmipura Ward,**  
**Sagar (M.P)-470001**

Workman

**Versues**

1. The Commandant,  
 Mahar Regimental Centre,  
 Sagar (M.P)-470001
2. Karyavahak Station Staff Adhikari  
 Administrative Officer,  
 First Class, Station Headquarter,  
 Sagar District Sagar (M.P.) 470001
3. M/s Talwar & Co.,  
 Through! Its proprietor  
 Mrs. Shobhana Talwar,  
 R/o 5/21, Sadar Baazar Sagar (MP)

Managemen

**JUDGMENT**

**(Passed on this 24<sup>th</sup> day of April, 2026)**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. **L-14012/04/2016 (IR(DU))** dt 02.06.2016. The dispute under reference relates to:

***“1. Whether Anil Sen S/o Motilal Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 5 year is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled?”***

***2. "Whether Anil Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?"***

***3. Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Anil Sen amounted to unfair labour Practice or not? If yes to what relief the workman is entitled to?"***

**In case No. R/56/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the ‘Act’) as per Notification No. L-14012/05/2016 (IR(DU)) dt. 02.06.2016. The dispute under reference relates to:

***“1. Whether Sh. Jitendra Sen S/o Thikaram Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 3 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled?”***

***2. 'Whether Sh. Jitendra Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?"***

***3. 'Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Jitendra Sen amounted to unfair labour Practice or not? If yes, to what relief the workman is entitled to”***

**In case No. R/57/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the ‘Act’) as per Notification No L-14012/06/2016 (IR(DU)) dt. 02.06.2016. The dispute under reference relates to:

***“1. Whether Sh. Shafeeq S/o Mohd. Rajjaq, who is working as Barber in Mahar Regimental Centre, Sagar for t for the last 30 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled?”***

***2. 'Whether Sh. Shafeeq is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract***

***labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?***

***3. 'Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Sh. Shafeeq amounted to unfair labour Practice or not? If yes to what relief the workman is entitled to?'***

**In case No. R/58/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-14012/07/2016 (IR(DU)) dt. 02.06.2016. The dispute under reference relates to:

***"1. Whether Sh. Kamlesh Sen S/o Gopal Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 20 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled?"***

***2. Whether Sh. Kamlesh Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?***

***3. 'Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Sh. Kamlesh Sen amounted to unfair labour Practice or not? If yes to what relief the workman is entitled to?'***

**In case No. R/59/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-14012/08/2016 (IR(DU)) dt. 02.06.2016. The dispute under reference relates to:

***"Whether Sh. Motilal Sen S/o Gulabchand Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 30 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled?"***

***2. 'Whether Sh. Motilal Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?'***

***3. Whether the action of the Mahar, Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Sh. Motilal Sen amounted to unfair labour Practice or not? If yes to what relief the workman is entitled to?'***

**In case No. R/60/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-14012/09/2016 (IR(DU)) dt. 02.06.2016. The dispute under reference relates to:

***“1. Whether Sh. Pran Singh Sen S/o Hazarilal Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 15 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled?***

***2. Whether Sh. Pran Singh Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?***

***3. Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Sh. Pran Singh Sen amounted to unfair labour Practice or not? If yes to what relief the workman is entitled to?”***

**In case No. R/61/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification No. L-14012/10/2016 (IR(DU)) dt. 02.06.2016. The dispute under reference relates to:

***“1. Whether Sh. Sunil Sen S/o Motilal Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 10 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled.***

***2. Whether Sh. Sunil Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?***

***3. Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barber without regularizing the services of Sh. Sunil Sen amounted to unfair labour Practice or not? If yes, to what relief the workman is entitled to?”***

**In case No. R/62/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification

No. L-14012/11/2016 (IR(DU)) dt. 02.06.2016. The dispute under reference relates to:

***“1. Whether Sh. Sandeep Sen S/o Motilal Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 5 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled?”***

***2. Whether Sh. Sandeep Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?”***

***3. “Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Sh. Sandeep Sen amounted to unfair labour Practice or not? If yes to what relief the workman is entitled to?”***

**In case No. R/63/2016 –**

As per letter dated 02.06.2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the ‘Act’) as per Notification No. L-14012/12/2016 (IR(DU)) dt 02.06.2016. The dispute under reference relates to:

***“1. Whether Shri Pappu Sen S/o Sh. Balram Sen, who is working as Barber in Mahar Regimental Centre, Sagar for the last 20 years is entitled for regularization with Mahar Regimental Centre, Sagar as Barber or not? If not to what relief the workman is entitled.”***

***2. Whether Shri Pappu Sen is working as Barber under Mahar Regimental Centre, Sagar directly or not and Whether the contract labour system existing at present with M/s Talwar & Co. is sham or not? If it is sham to what relief the workman is entitled to?”***

***3. ‘Whether the action of the Mahar Regimental Centre, Sagar in publishing paper advertisement and trying to recruit regular Barbers without regularizing the services of Shri Pappu Sen amounted to unfair labour Practice or not? If yes to what relief the workman is entitled to?’”***

Since, the disputes, the facts and evidence in all cases were identical, hence after hearing arguments, these cases are being disposed by common Judgment and Award.

**The case of the Workmen** in these cases is mainly that, they have been working as a Barber in the Office of Brigadier Mahar Regimental Centre, Sagar, and have experience as well expertise in the field for the past many years, details of their engagement tenure produced in tabular form. They also received appreciation for their work, have been getting remuneration of Rs. 2200/- per month and have worked more than 240 days in every single calendar year, thus have earned status of a permanent employee under the Act. They have been issued gate passes by the Office

of the Brigadier, their records are maintained in the Office of Management No.1 i.e. the Brigadier of the Regimental Centre. They are entitled to be granted permanent status and regularization of their service. They preferred representation in this respect before the Appropriate Authority and were granted liberty to approach the Office of Management No.1 i.e. the Office of the Brigadier of the Regimental Centre. They did prefer a representation to the Office of the Brigadier of the Regimental Centre, seeking permanent status and regularization of their services which is not yet been granted.

**The Management No.1** (Brigadier Mahar Regimental Centre) came up with an advertisement dated 29.08.2015 for fresh recruitment of Barbers, with age bar between 18 to 25 years and educational qualification Matriculation passed, no preference or relaxation was given to the Applicant Workmen in the advertisement. They preferred a representation dated 10.09.2015 to the various Authorities. They also raised a dispute before the Deputy Chief Labour Commissioner, Jabalpur under Section 12 of the Act. During the conciliation proceedings, the Management appeared but no conciliation could be reached at, hence, the Deputy Chief Labour Commissioner sent a failure of conciliation report to the Ministry. It is further the case of the Applicants that in the meanwhile, the Management No.1 i.e. the Office of Brigadier of Regimental Centre prevented the applicants from entering their premises and applicants were restrained from discharging their duties as a Barber. They preferred an application under Section 33(1) of the Act before the Deputy Chief Labour Commissioner on 25.01.2016. Notice was issued to the Management on 25.01.2016. One M/s Talwar & Company appeared in response to the notice and stated that the work was stopped from 21.01.2016 to 28.01.2016 due to Republic Day arrangements and thereafter the applicants could immediately join back to the service. The Applicants were allowed to work from 03.02.2016 to 01.04.2016 as Barbers but, were again discharged though the matter was pending adjudication. It is thereafter, the Applicants approach Hon'ble High Court of M.P. by way of filing the Writ Petition No. 8757/2016 which was decided by Hon'ble High Court, the applicants were directed to approach the Tribunal and Government was directed to sent a reference with respect to the dispute to the Tribunal. Thereafter, the reference was sent by the Government to the Tribunal.

According to the Workmen, due to working continuously for so many years detail mentioned in tabular form –

<i>S.No.</i>	<i>Name of the workmen</i>	<i>Age of the workmen at the time of disengagement</i>	<i>No. of years the workmen worked with Management at the time of disengagement</i>	<i>Posts on which the applicant workmen were working with Management</i>
<i>1.</i>	<i>Anil Sen</i>	<i>23 years</i>	<i>08 years</i>	<i>Barber</i>
<i>2.</i>	<i>Jitendra</i>	<i>23 years</i>	<i>06 years</i>	<i>Barber</i>
<i>3.</i>	<i>Shafeeq</i>	<i>45 years</i>	<i>25 years</i>	<i>Barber</i>

4.	<i>Kamlesh</i>	<i>35 years</i>	<i>20 years</i>	<i>Barber</i>
5.	<i>Motilal</i>	<i>50 years</i>	<i>34 years</i>	<i>Barber</i>
6.	<i>Pran Singh</i>	<i>32 years</i>	<i>15 years</i>	<i>Barber</i>
7.	<i>Sunil Sen</i>	<i>29 years</i>	<i>11 years</i>	<i>Barber</i>
8.	<i>Sandeep</i>	<i>22 years</i>	<i>06 years</i>	<i>Barber</i>
9.	<i>Pappu</i>	<i>42 years</i>	<i>25 years</i>	<i>Barber</i>

They have matured their right to permanent status and that of regular employee which has been denied to them by Management. There is no academic or professional qualification required nor is there any curriculum for the job of Barber, conducted by any Authority and they have got the professional skill of Barbers by way of experience and expertise. According to the Applicants, this action of Management in refusing them permanent status and regularization is unjust, illegal, arbitrary and amounts to unfair labour practice. They have requested that the Management No.1 i.e. the Office of the Brigadier of the Regimental Centre be directed to regularize their services and grant them wages as per scale, alternatively, they be granted preference in the recruitment process of regular/fresh appointment of Barbers in the Office of Management No.1.

**Management No.1** has filed written statement on their behalf Station Staff Officer of the Station Headquarter Regimental Centre in which they have pleaded that these applicants were in fact employed by M/s Talwar & Company, who has been providing hair cutting services to the personnel of Mahar Regimental Centre on monthly or yearly basis. The Regimental Centre is authorized civilian barbers based on Army Instruction No. 124/63 and Army Instruction No. 186/66, there was 100% deficiency of Barbers in the Centre. Outsourcing of essential services was contractual agreement on yearly basis by way of tender, the payment was calculated by multiplying number of trainees and permanent staff at the rate amount fixed with the Contractor for providing hair cutting services to one trainee per month. The bills were raised by Contractor and were paid by the Controller of Defense Account at Jabalpur on monthly basis. The Mahar Regimental Centre is not aware about the details of the duration of employment of these Barbers or wages paid to them by the Contractor, because the Regimental Centre is not their employer rather they have been employed by the Contractor M/s Talwar & Company who can verify about the employment and payments. This system of outsourcing was stopped by Controller of Defense Accounts, Jabalpur vide their DO dated 18.02.2015, hence case for continuation of outsourcing of essential services was taken up with Integrated Financial Authority by the Regimental Centre vide letter dated 18.03.2015 which was not sanctioned. Thereafter, on the request of the Regimental Centre, the Headquarter released vacancies of civil tradesman employees for direct recruitment, in which the post of Barbers were also included. The recruitment process for the post of Barbers was carried out in September/October, 2015. The vacancies were published in newspapers, the applicants who were employed by the Contractor M/s Talwar & Company were also granted opportunity to participate in the recruitment process. Some of them did apply for that, but many of them did not meet

the criteria of age as well educational qualification mentioned in the recruitment Rules, hence were rejected. Two were selected and are presently employed as Barbers in the Regimental Centre. It is further the case of the Management that, after the Controller of the Defense Accounts, Jabalpur stopped payment for outsourcing of hair cutting services, w.e.f. 01.04.2015 there was considerable gap from 01.04.2015 to 31.03.2016, before the Barbers from direct recruitment were made available to the Regimental Centre in this circumstance, in order to ensure discipline, hygiene and sanitation standard of the troops, the Regimental Centre entered into a private contract agreement with M/s Talwar and Company for hair cutting w.e.f. 01.04.2015 to 31.03.2016. Payments for these services were made by the regular staff from their own pockets which were reimbursed by the Regimental Centre. Meanwhile, the 08 barbers including the sons of two Applicant Workmen joined the Center and this system was also done away from 01.04.2016. Thus according to Management, there is never been any relationship of employer and employee between the Regimental Centre and the Applicant Workmen. Hence, there is no question of their disengagement by the Regimental Centre, the Management of Regimental Centre has prayed that reference be answered against the applicant workmen.

**During the course** of proceedings, the Contractor M/s Talwar & Company were also impleaded party after impleadment, notices were sent to them but in spite of service of notices on them, they did not appear and did not file any written statement.

**The Applicants** filed rejoinder in which they stated that, the so called agreements between the Contractors and the Regimental Centre are sham and camouflage adopted by the Regimental Centre just to deny the claims of these Applicant Workmen. In fact, the salary was paid by the Regimental Centre and not by the Contractor. The Applicants worked under the instructions and control as well supervision of the officers of Regimental Centre in their campus. In fact, the Applicant Workmen have been working under the supervision, control and instructions of the Regimental Centre and the so called outsourcing agreements are in fact sham, the works they have discharged are integral to the Centre activities and are of permanent and perennial nature. The Regimental Centre has adopted unfair labour practice by way of engaging Workers on contract for years and years on the job of permanent nature which is prohibited in law. Management cannot be allowed to take benefit of their own misdeeds.

**In all these cases**, the workmen have filed their affidavits as their examination in chief, they have been cross-examined by the Management of Regimental Centre. The Regimental Centre has also filed affidavit of its witness as their examination in chief. He has also been cross-examined by the workmen. Both the sides have filed and proved documents, to be referred to as and when required.

**I have heard arguments** of Learned Counsel for the Applicant Workmen Mr. Rohan Harne assisted by Mr. Dhananjay Srivastava

Learned Counsel and Mr. Gajendra Singh Chauhan Learned Counsel for Management of Regimental Centre.

As stated earlier, the Contractor M/s Talwar & Company has not contested the case. They never appeared in spite of the service. They did not file any pleading. The Management of Regimental Centre has filed written submissions also which are part of the record. I have gone through the Written Submissions as well the record.

On perusal of record in the light of rival arguments, following issues arise for determination –

1. *Whether, the Regimental Centre is an Industry under Section 2(j) of the Act for the purpose?*
2. *Whether, the Outsourcing agreements regarding to outsourcing of services of Barbers to Contractors as pleaded by the Regimental Centre, are sham and camouflage, just to deny the legal admissible claims of the Applicant Workmen with respect to permanency of status and regularization?*
3. *Whether, the Management of Regimental Centre has adopted unfair labour practice in the case in hand?*
4. *Subject to findings on issue No. 1 and 2, whether the workmen are entitled to any relief claimed?*

Issue No. 1 –

Learned Counsel for the Management has submitted that, the Management No.1 is a part of Defense Force, who performs sovereign functions, hence not an Industry under Section 2(j) of the Industrial Disputes Act. He refers to *Judgment of Hon'ble High Court of Jammu and Kashmir in LPA No. 116/2024 and connected writs General Officer Commanding Headquarter V.s. Aijaz Ahmed and Others* in which it has been laid down that Porters who carry articles to different locations and are attached with the Battalions, the Battalions/General Officer Commandant is not an 'Industry' under Section 2(j) of the Act for these purposes. But, the fact in this case are different, hence, this judgment is not applicable in the case in hand. As it has been held down by the Seven Judge Bench in the case of *Bangalore Water-Supply & Sewerage Board V.s. Rajappa & ors (1978) 02 SCC 213*, the activities of an establishment who initially discharges sovereign functions may be industry if it is found that, the activity had no connection with the discharge of the sovereign function. The relevant portion of the said Judgment is being reproduced as follows -

**1. The term "analogous to the trade or business" could not cut down the scope of the term "industry". The said words can reasonably mean only activity which results in good made and manufactured or service rendered which are capable of being converted into saleable ones. They must be capable of entering the world of "res commercium", although they may be kept out of the**

market for some reason. It is not the motive of an activity in making goods or running a service but the possibility of making them marketable if one who makes goods or renders service so desires, that should determine whether the activity lies within the domain or circle of industry. But even this may not be always a satisfactory test. By this test the type of services which are rendered purely for the satisfaction of spiritual or psychological urges of persons rendering those services would be excluded. Whenever an industrial dispute would arise between either employers and their workmen or between workmen and workmen, it should be considered an area within the sphere of "industry" but not otherwise. In other words, the nature of the activity will be determined by the conditions which give rise to the likelihood of the occurrence of such disputes and their actual occurrence in the sphere.

Judgments published in the order and date as delivered.

"D. N. Banerje's case [1953] SCR 302; Corporation of City of Nagpur v. Its Employees [1960] 2 SCR 942; State of Bombay and Others v. The Hospital Mazdoor Sabha and Others [1960] 2 SCR 866 referred to and followed.

3. The term "sovereign should be reserved technically and more correctly for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane, of its own. Only those services which are governed by separate rules and constitutional provisions such as Articles 310 and 311 should, strictly speaking be excluded from the sphere of industry by a necessary implication. The H. H. Kesavananda Bharati Sripathagalavaru v. State of Kerala [1973] Supplemental S-C-R, Page-1 referred to.

4. The special excludes the applicability of the general. Certain public utility services which are carried out by governmental agencies or Corporations are treated by the Act itself as within the sphere of industry. If express rules under other enactments govern the relationship between the State as an employer and its servants as employees, it maybe contended on the strength of such provisions that a particular set of employees are outside the scope of the Industrial Disputes Act.

5. The State today increasingly undertakes commercial functions and economic activities and services as part of its duties in a welfare state. Hence to artificially exclude state-ran industry from the sphere of the Act, unless the statutory provisions expressly or by necessary

implication have that effect, would not be correct. Rajasthan State Electricity Board v. Mohanlal [1967] 3 SCR 377; Rajasthan v. Mst. Vidyawanti & Anr. [1962] Supplemental 2 SCR 989 at 1002 referred to.

1. Section 2(j) of the Industrial Disputes Act (1947) which defines, "industry" contains words of wide import, as wide as the Legislature could have possibly made them. The problem of what limitations could and should be reasonably read in interpreting the wide words used in section 2(j) is far too. policy oriented to be satisfactorily settled by judicial decisions. The Parliament must step in and legislate in 'a manner which will leave no doubt as to its intention. That alone can afford a satisfactory solution to the question which has agitated and perplexed the judiciary at all levels.

2. Hospital Mazdoor Sabha was correctly decided in so far as it held that the JJ Group of hospitals was an industry but the same cannot be said in regard to the view of the Court that certain activities ought to be treated as falling outside the definition clause.

3. There is no justification for excepting the categories of public utility activities undertaken by the Government in the exercise of its inalienable function,, under the constitution, call it regal or sovereign or by any other name, from the definition of "industry". If it be true that one must have regard to the nature of the activity and not to who engages in it, it is beside the point to enquire whether the activity is undertaken by the State, and further, if so, whether it is undertaken in fulfilment of the State's constitutional obligations or in discharge of its constitutional functions. In fact, to concede the benefit of an exception to the State's activities which are in the nature of sovereign functions is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity; for, sovereign functions can only be discharged by the State and not by a private person. If the State's inalienable functions are excepted from the sweep of the definition contained in section 2(j), one shall have it is the nature of the activity is an industry. Indeed, in this respect, it should make no difference whether on the one hand, an activity is undertaken by a corporate body in the discharge of its statutory functions or, on the other, by the State itself in the exercise of its inalienable functions. If the water supply and sewerage schemes or fire fighting establishments run by a Municipality can be industries sought to be the manufacture of coins and currency, arms and ammunition and the winning of oil

and uranium. The fact that these latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question whether these activities are industries. When undertaken by a private individual they are industries, therefore, when undertaken by the State, they are industries. The nature of the activity is the determining factor and that does not change according to who undertakes it. Items 8, 11, 12, 17 and 18 of the First Schedule read with section 2(n) (vi) of the Industrial Disputes Act render support to this view. These provisions which were described in Hospital Mazdoor Sabha as 'very significant' at least show that, conceivably, a Defence Establishment, a Mint or a Security Press can be an industry even though these activities are, ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions. The State does not trade when it prints a currency note or strikes a coin. And yet, considering the nature of the activity, it is engaged in an industry when it does so.

4. A systematic activity which is organized or arranged in a manner in which the trade or business is generally organized or arranged would be an industry despite the fact that it proceeds from charitable motives. It is in the nature of the activity that one has to consider and it is upon the application of that test that the State's inalienable functions fall within the definition of industry. The very same Principles must yield the result that just as the consideration as to who conducts the activity, is irrelevant for determining whether the activity is an industry so is the fact that the activity is charitable in nature or is undertaken with a charitable motive. The status or capacity corporate or constitutional, of the employer would have, if at all, closer nexus, than his motive on the question whether the activity is an industry. The motive which propels the activity is yet another step removed and ex hypothesi can have no relevance on the question as to what is the nature of the activity. It is never true to say that the nature of the activities is charitable. The subjective motive force of an activity can be charity but for the purpose of deciding whether an activity is an industry one has to look at the process involved in the activity, objectively. The jural foundation of any attempt to except charitable enterprises from the scope of the definition can only be that' such enterprises are not undertaken for profit. But then, that clearly, is to introduce the profit concept by a side wind, a concept which has been rejected consistently over the years. If any Principle can be said to be settled law in this vexed field it is this : the twin consideration of profit motive and capital investment is irrelevant for determining whether an

**activity is an industry. Therefore, activities which are dominated by charitable motives either in the sense that they involve the rendering of free or near free services or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of the definition of section 2(j). It is as much beside the point to inquire who is the employer as it is to inquire, why is the activity undertaken and what the employer does with the profits, if any.**

Relying on this preposition of law, *the Management No.1 is held 'industry' as defined under Section 2(j) of the Act for the purposes of Civilian Barbers as it is the case in hand and these Barbers are held to be a 'workman' as defined under the Act.*

*Issue No.1 is answered accordingly.*

**Issue No. 2 –**

Learned Counsel for the Workmen has submitted that there has always been requirement of Barbers as it is admitted by the Management itself. This is also not disputed that the nature of the activity is of permanent and perennial nature. Hence, *firstly*, the Management was barred in law for engaging Outsourced Workers for the jobs of permanent and perennial nature. *Secondly*, under the ***Contract Labour Regulation and Abolition Act, 1970 and Rules prepared there under***, the Principal employer i.e. the Management No.1 in the case in hand and the Contractor are required to have been registered with the Labour Department and licensed with it. There is nothing on record to show that they are licensed Principal employer and contractors. Learned Counsel further submits that, the Barbers worked in the campus of the Management No.1 i.e. the Brigadier of the Mahar Regimental Centre and under the instructions of the Officers of the Regimental Centre. Their work was also supervised by the Officers of the Regimental Centre. Hence, since the so called Outsourcing Contracts for three years, which the workmen side disputed as not genuine because they do not contain signatures of any of the parties. Even if they are taken to be genuine, they are nothing but sham and camouflage to deny the workmen of their legally admissible rights. Learned Counsel further submits that these submissions are alternate submission because their first case is that, the workmen have been directly engaged by the Management No.1 and were paid their wages by the Management No.1 itself. Hence, according to the Learned Counsel for these Workmen, since *firstly*, it is proved that these workmen worked directly under the Management or even alternatively, if it is found proved that, they worked under sham and bogus Outsourcing Contracts, they shall be held to be the employees of the Management No.1. Learned Counsel has referred to Judgment of Hon'ble Supreme Court in this respect in the case of ***General Manager Bengal Nagpur Cotton Mills V.s. Bharat Lal (2011) 1 SCC 635***

**On the other hand**, it has been submitted by the Learned Counsel for the Management that, they have specifically denied the claim of the workmen that they ever worked under the Management of Regimental Centre as claimed by them, rather the services of the Barbers was Outsourced by the Regimental Centre to Contractor M/s Talwar & Company, who provide them and paid their wages. He further submits that, only control and supervision does not make the outsourcing contract sham and camouflage, it is to be seen that they were employed by the Contractor and were paid by the Contractor. The Contractor used to raise bills and was paid by the Management.

Learned Counsel has referred to judgment of *Hon'ble Supreme Court in the case of Bharat Heavy Electricals Ltd. V.s. Mahendra Prasad Jakhmola & ors. (2019) 13 SCC 82*

The Workmen side has not produced any documentary evidence except the entry pass in support of the claim that they have been engaged by the Management of Regimental Centre directly and are not an Outsourced employees. The Workmen have stated their affidavit as their examination in chief, that they were directly engaged by the Regimental Centre and worked under the control and supervision of the Regimental Centre in their campus. They were also paid their wages by Officers of Regimental Centre. Keeping in view their alleged long engagement period as they claim, non production of any document with regards to payment of wages, provident fund etc. makes their statement on this point not so reliable. However, this fact is also required to be considered that though the Management has pleaded that the Barbers were taken through outsourcing agency, who supplied Barbers in the Campus and have filed and proved outsourcing contracts only for three years i.e. from 2012-2013, 2013-2014 & 2014-2015. This is also to be kept in mind that out of these three outsourcing contracts, two do not contain signatures of any of the parties. Learned Counsel for the Management submitted on this point that, photocopies were filed but the originals contain their signatures. Even if, we take that these contracts are signed by the parties, the point still remains that there is nothing on record to substantiate this case of the Management that, there was any Outsourcing agreement between the Management and the any Contractor for outsourcing the services of the Barbers before 2012. The Regiment is no doubt more than three years old at Sagar. This leads to an inference that these workmen were working as Contract Employees of the establishment of Brigadier of Mahar Regimental Centre before 2012 and after 2012, their services were taken through Outsourcing Agency.

Under Section 7, 12 & 10 of *Contract Labour (Regulation and Abolition) Act and Rules*, every Principal employer and Contractor are required to obtain a license for Contract Labour, but no license has been filed on record.

Contract Labour (Regulation & Abolition) Act, 1970, he has referred to section 7, 12 & 10 of the Act which is being reproduced as follows:-

**7. Registration of certain establishments.—**

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment: Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

**12. Licensing of contractors.—**

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

**“10. Prohibition of employment of contract labour.-**

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board,

**prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.**

**(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-**

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment ;**
- (b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;**
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;**
- (d) whether it is sufficient to employ considerable number of whole-time workmen.**

In the Judgment of *Bengal Nagpur Cotton Mills (supra)* referred to by Learned Counsel for Workmen, tests for determining whether the Contract Labour is direct employee of Principal employer has been laid down in Para 10 to 12 of the Judgment, which is being reproduced as follows –

***“10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are:***

- (i) whether the principal employer pays the salary instead of the contractor; and***
- (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant.***

***11. On a careful consideration, we are of the view that the Industrial Court committed a serious error in arriving at those findings. In regard to the first test as to who pays the salary, it placed the onus***

*wrongly upon the appellant. It is for the employee to aver and prove that he was paid salary directly by the principal employer and not the contractor. The first respondent did not discharge this onus. Even in regard to the second test, the employee did not establish that he was working under the direct control and supervision of the principal employer. The Industrial Court misconstrued the meaning of the terms "control and supervision" and held that as the officers of the appellant were giving some instructions to the first respondent working as a guard, he was deemed to be working under the control and supervision of the appellant.*

*12. The expression "control and supervision" in the context of contract labour was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union<sup>3</sup> thus: (SCC p. 388, paras 38-39) -*

*"38.... if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*

*39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor".*

In the case of *Bharat Heavy Electrical Ltd (supra)*, referred to from the side of Management, Para 11, 12, 16, 19, 23 and 24 are being reproduced as follows –

*"11. Having heard the learned counsel for both the sides, it is important. First, to advert to the award of the Labour Court. The said award sets down the Notification dated 24-4-1990 that was issued under the 1970 Act. A reading of the aforesaid notification makes it clear that the appellant, insofar as their UP operations are concerned, in Haridwar, in particular, are exempted from the aforesaid notification. Despite this, however, the Labour Court went on to apply the said notification, which would clearly be perverse. In*

*addition, though Ms Jain stated that documentary evidence was filed, yet the Labour Court based its finding on direct relationship between the parties only on the gate passes being issued by the appellant, and on a concession made by the appellant's representative.*

12. *What is clear from the evidence that was led by the parties is that the aforesaid gate passes were issued, as has been stated by the appellant's witness, only at the request of the contractor for the sake of safety and also from the administrative point of view. The idea was security, as otherwise any person could enter the precincts of the factory. This evidence was missed by the Labour Court when it arrived at a conclusion that a direct relationship ought to be inferred from this fact alone. Further, as has been correctly pointed out by Shri Sudhir Chandra, the appellant has, not only in the first review, but also in the writ petition filed, taken the plea that no such concession was ever made. Moreover, quite apart from this plea and the counter plea of Ms Jain that the person who has made such concession should have stated that he did not do so, concessions on mixed questions of fact and law cannot decide cases as the evidence as a whole has to be weighed and inferences drawn therefrom.*
16. *A look at this provision together with the judgment in *Basti Sugar Mills e Ltd. v. Ram Ujagar* relied upon by Ms Jain, would show that in order that Section 2(i)(iv) apply, evidence must be led to show that the work performed by contract labour is a work which is ordinarily part of the industry of BHEL. We find, on the facts of the present case, that no such evidence has, in fact, been led. Consequently, this finding is also a finding directly applying a provision of law without any factual foundation for the same.*
19. *Equally, the review judgment apart from being cryptic, draws an unsustainable conclusion after setting out Para 3 of the written statement of BHEL in the Labour Court. What was stated by BHEL in Para 3 was that the workmen were only engaged by the contractor and were not their employees. The written statement then goes on to be speculative in stating that it appears that a workman might have been engaged as an employee by a particular contractor. A plain reading of this written statement would certainly not suggest that BHEL is not sure as to whether workmen were or were not supplied by a contractor, or engaged by BHEL. What is clear from the written statement is that BHEL has denied that the workmen were engaged by BHEL or that the workmen were BHEL's workmen. From this to conclude that the transaction seems to be "sham", is again wholly incorrect. Apart from this, it is also incorrect*

*to state that BHEL has not placed on record any material to demonstrate that under the alleged labour contract, payment was ever made in 9 favour of Madan Lal, the alleged contractor.*

23. *From this judgment in Bengal Nagpur Cotton Mills case, it is clear that Test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor "what to do" after the contractor assigns/allots the employee to the principal employer. This is precisely what para 12 of Bengal Nagpur Cotton Mills case explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workman has been assigned to the principal employer to do a particular work.*

24. *We may hasten to add that this view of the law has been reiterated in Balwant Rai Saluja v. Air India Ltd. 11, as follows: (SCC pp. 437-38, para 65)*

*"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:*

*(i) who appoints the workers;*

*(ii) who pays the salary/remuneration;*

*(iii) who has the authority to dismiss;*

*(iv) who can take disciplinary action;*

*(v) whether there is continuity of service; and*

*(vi) extent of control and supervision i.e. whether there exists complete control and supervision.*

*As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case, International Airport Authority of India case and Nalco case."*

Now, looking into the evidence as discussed above, on the Principles laid down the aforesaid decision, it is held that the outsourcing contracts for three years produced and proved by the Management are though highly irregular as the parties to the Outsourcing Contracts do not require license and the work is of permanent and perennial nature, but since it is not proved that, the payments were directly made by the Management to the Workmen, and that there was no evidence of engagement of these workmen by the Management directly, also keeping in view that when there is a contract of manpower supply naturally, the Principal employer has

power to control and supervise all the manpower supplied, *the Outsourcing Contracts are held not sham and camouflage.*

*Issue No. 2 is answered accordingly.*

*Issue No.3 –*

Learned Counsel for Workmen has submitted that, in this case, the Management of Regimental Centre has adopted unfair labour practice. This argument has been countered by the Learned Counsel for the Management.

*Section 2(ra) of the Act defines unfair labour practice, which is being reproduced as follows –*

*2(ra) “unfair labour practice” means any of the practices specified in the Fifth Schedule;*

**THE FIFTH SCHEDULE See section 2(ra) UNFAIR LABOUR PRACTICES I.—On the part of employers and trade unions of employers**

1.....

.

**10. To employ workmen as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.**

11. ....

**25T. Prohibition of unfair labour practice.—**No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

**25U. Penalty for committing unfair labour practices.—**Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

**It in the pleadings of Management** that, there have been sanctioned vacancies of as many as 14 Civilian Barbers in the Regimental Centre, since there was a 100% deficiency, the services were outsourced. Nature of activity of the workmen who are Barbers is also such that it is of permanent and perennial nature. Even if, it is held established that, the workmen were not directly employed by Regimental Centre, rather they were Outsourced Employees, the action of Management in engaging Contract Workers for the job of Barbers which is of permanent and perennial nature for years and years (details mentioned earlier) is in violation of Clause 10 of Schedule V and **is held that by not employing the workmen on permanent regular basis against the permanent vacancy and engaging contract labours for a work of permanent perennial nature either directly or by outsourcing agencies, the management is held adopting unfair labour practice which is prohibited under the Act.**

*Issue No. 3 is answered accordingly.*

**Issue No. 4 –**

In the light of findings that, the Management in the case in hand has adopted unfair labour practice, the questions arises is regarding the relief to which the workmen in the case in hand may be entitled to.

**Learned Counsel** for the Management, referred to Judgment of Hon'ble Supreme Court in the case of *Municipal Council V.s. K. Jayaram and ors. SLP No. 17711-17713 of 2019* in which it was laid down that since, the workers were outsourced employees, they cannot be recognized as employee of the Management, though the Hon'ble Supreme Court granted relief to them as a special case, using their power under Section 142 of Constitution.

Following paragraphs of the judgment referred **Sudarshan Rajpoot v/s U.P. State Road Transport Corporation (2015) II, SCC 317** which are being reproduced as follows:-

**“11.** *It has been contended by the learned counsel for the appellant workman that the High Court has erred in placing reliance upon the decision of this Court in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , which was distinguished inasmuch as the said case is not applicable to the case on hand for the reason that the appellant workman is a “workman” as defined under Section 2(z) of the UPID Act and the respondent is the statutory corporation which is an undertaking of the State Government and therefore, as it is an instrumentality of the State Government, it will come within the definition of “industry” as defined under Section 2(k) of the UPID Act. Therefore, the said provisions of the UPID Act are applicable to the appellant workman as he is a “workman” as defined under Section 2(z) of the UPID Act and Section 2(s) of the ID Act, 1947.*

**12.** *Further, it is contended that the High Court has failed to consider the “unfair labour practice” as defined under Section 2(ra) of the ID Act, 1947 read with Sections 25-T and 25-U and Schedule V of the ID Act. Item 10 of Schedule V of the ID Act prohibits the employer to employ workmen as badlis, casuals or temporaries and to continue them as such for years in the Corporation, with the object of depriving them of the status and privileges of permanent workmen is prohibited. It is further contended that the respondent Corporation is liable for penal action under the provisions of Section 25-U of the ID Act. In support of the above contention, reliance was placed on the three-Judge Bench decision of this Court in Chief Conservator of Forests v. Jagannath Maruti Kondhare [Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293 : 1996 SCC (L&S) 500] .*

**13.** *On the other hand, the learned counsel appearing on behalf of the respondent Corporation sought to justify the correctness of the finding and reasons recorded by the High Court in the impugned judgment [U.P. SRTC v. Sudarshan Rajpoot, Writ-C No. 21553 of 2005, order dated 5-3-*

2008 (All)] . Alternatively, it is contended that even if the order of termination is bad in law, the workman who is working on the contract basis is not entitled for reinstatement with full back wages as per the view taken by this Court in several decisions. Therefore, the learned counsel for the respondent Corporation submits that the impugned judgment [U.P. SRTC v. Sudarshan Rajpoot, Writ-C No. 21553 of 2005, order dated 5-3-2008 (All)] and order need not be interfered with by this Court in exercise of its appellate jurisdiction.

**14.** With reference to the abovesaid rival legal contentions the following substantial questions would arise for our consideration:

**14.1.** (i) Whether the High Court is justified in passing the impugned judgment [U.P. SRTC v. Sudarshan Rajpoot, Writ-C No. 21553 of 2005, order dated 5-3-2008 (All)] , order and reversing the award passed by the Labour Court?

**14.2.** (ii) Whether the order of termination passed against the appellat workman amounts to retrenchment as defined under Section 2(s) of the UPID Act, 1947?

**14.3.** (iii) Whether non-compliance with the statutory provisions under Sections 6-N and 6-Q of the UPID Act which are analogous with Sections 25-F and 25-H, respectively, of the ID Act, 1947 renders the order of termination void ab initio in law?

**14.4.** (iv) What relief is the appellat workman entitled to?

**15.** To answer the above substantial questions of law it is necessary for this Court to extract the order of termination passed by the Assistant Regional Manager of the Corporation, which reads thus:

“OFFICE OF ASSISTANT REGIONAL MANAGER,

U.P. TRANSPORT CORPORATION, AZAD NAGAR DEPOT

Letter No. ARM/A. Ngr/Bus Accident 0582/2000/3591 dated 29-7-2000

OFFICE ORDER

On 7-6-1999 vehicle bearing No. 8582 which had met with an accident which was being driven on 7-6-1999 by Shri Sudarshan Rajpoot, contractual driver and conductor Shri Kamta Prasad on Deoria to Kanpur route and accident occurred on the way at 1.30 a.m. in the night at Village Palhari, Barabanki near Police Station Safdarganj and due to negligent driving of the driver, department suffered heavy loss.

Hence, in order to meet departmental loss, forfeiting security of driver Shri Sudarshan Rajpoot, I pass the order to strike off his name from the contract roll with an immediate effect. His name be struck off from contract roll.

*sd/-*  
*(Illegible)*  
*(Sad Sayed)*  
 Assistant Regional Manager,  
 Azad Nagar, Depot”  
*(emphasis supplied)*

*In the aforesaid order of termination it is specially mentioned that the appellant workman was appointed as a driver on contractual basis. It has been further stated that the accident occurred on 7-6-1999 due to the negligent driving of the appellant workman resulting in heavy loss to the Department of the respondent Corporation. In order to meet the departmental loss, security amount of driver was forfeited and Assistant Regional Manager had struck off the name of the appellant workman from the contract employees roll with immediate effect.*

**16.** *The respondent Corporation has neither produced documentary evidence nor showed before the Labour Court that the appellant workman was appointed on contract basis. The fact that he deposited Rs 2000 towards security amount with the respondent Corporation indicates that he was working as a driver on a permanent basis. In view of Schedule V, Item 10 of the ID Act, 1947 the respondent Corporation is prohibited from engaging the appellant workman as a badli, casual or temporary workman to work on permanent basis. The fact that he had been continuously working for more than 3 years and he had rendered more than 240 days of service as the driver in a calendar year until his termination order and yet he is being engaged on a contractual basis in the respondent Corporation is statutorily prohibited. The same amounts to an unfair labour practice as defined under Section 2(ra) read with Section 25-T, which action of the Corporation is punishable under Section 25-U of the ID Act. This legal position is settled by this Court in Chief Conservator of Forests case [Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293 : 1996 SCC (L&S) 500] wherein it was held as under : (SCC pp. 302-03, para 22)*

*“22. ... In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to the Industrial Court of Pune (and 15 to the Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered, that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par*

*excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on the increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants."*

**25.** *This Court in the later judgment in Hari Nandan Prasad v. Food Corporation of India [Hari Nandan Prasad v. Food Corporation of India, (2014) 7 SCC 190 : (2014) 2 SCC (L&S) 408] , after advertng to the law laid down in U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh [(2007) 5 SCC 755 : (2007) 2 SCC (L&S) 258] and Maharashtra SRTC [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] wherein Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is adverted to in both the cases, held that on a harmonious reading of the two judgments, even when there are posts available, in the absence of any unfair labour practice the Labour Court cannot give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, such a direction cannot be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules:*

**25.1.** *It was held at para 32 in Hari Nandan Prasad case [Hari Nandan Prasad v. Food Corporation of India, (2014) 7 SCC 190 : (2014) 2 SCC (L&S) 408] as under : (SCC p. 211)*

*"32. However, the Court in Maharashtra SRTC case [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] found that the factual position was different in the case before it. Here the post of cleaners in the establishment were in existence. Further, there was a finding of fact recorded that the Corporation had indulged in unfair labour practice by engaging these workers on temporary/casual/daily-wage basis and paying them paltry amount even when they were discharging duties of eight hours a day and performing the same duties as that of regular employees."*

**25.2.** *Further, Hari Nandan Prasad [Hari Nandan Prasad v. Food Corporation of India, (2014) 7 SCC 190 : (2014) 2 SCC (L&S) 408] referred at para 36, LIC v. D.J. Bahadur [(1981) 1 SCC 315 : 1981 SCC (L&S) 111 : (1981) 1 SCR 1083] in which the relevant para 22 of LIC case [(1981) 1 SCC 315 : 1981 SCC (L&S) 111 : (1981) 1 SCR 1083] is extracted as under : (Hari Nandan Prasad case [Hari Nandan Prasad v. Food Corporation of India, (2014) 7 SCC 190 : (2014) 2 SCC (L&S) 408] , SCC p. 213)*

*"36. ... '22. The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure, so that the*

*energies of the partners in production may not be dissipated in counterproductive battles and the assurance of industrial justice may create a climate of goodwill.’ (D.J. Bahadur case [(1981) 1 SCC 315 : 1981 SCC (L&S) 111 : (1981) 1 SCR 1083] , SCC p. 334, per Krishna Iyer, J.)*

*In order to achieve the aforesaid objectives, the Labour Courts/Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights, with the underlying objective to achieve social justice. Way back in the year 1950 i.e. immediately after the enactment of the Industrial Disputes Act, in one of its first and celebrated judgment in Bharat Bank Ltd. v. Employees [1950 SCC 470 : AIR 1950 SC 188 : 1950 LLJ 921 at p. 948] this aspect was highlighted by the Court observing as under : (AIR p. 209, para 61)*

*‘61. ... In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.’”*

**25.3.** *And again at para 37, observing that the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in New Maneck Chowk Spg. & Wvg. Co. Ltd. v. Textile Labour Assn. [AIR 1961 SC 867] , the relevant para 6 of which is extracted as under : (Hari Nandan Prasad case [Hari Nandan Prasad v. Food Corporation of India, (2014) 7 SCC 190 : (2014) 2 SCC (L&S) 408] , SCC p. 213, paras 37-38)*

*“37. ... ‘6. ... This, however, does not mean that an Industrial Court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject-matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by this Court.’ (Textile Labour Assn. case [AIR 1961 SC 867] , AIR p. 870)*

*38. It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principle of fair play and justice.”*

**26.** *In view of the aforesaid statement of law laid down by this Court after adverting to the powers of the Industrial Tribunal and the Labour Court as interpreted by this Court in the earlier decisions referred to supra, the said principle is aptly applicable to the fact situation of the*

case on hand, for the reason that the Labour Court recorded a finding of fact in favour of the workman that the termination of services of the appellant herein is not legal and valid and further reaffirmed the said finding and also clearly held that the plea taken in the order of termination that he was appointed on contract basis as a driver is not proved by producing cogent evidence. Further, we hold that even if the plea of the employer is accepted, extracting work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. Therefore, we have held that it amounts to an unfair labour practice as defined under Section 2(ra) of the ID Act, 1947 read with Section 25-T which is prohibited under Section 25-U, Chapter V-C of the ID Act, 1947. We have to hold that the judgment of the High Court in reversing the award is not legal and the same is set aside by us.

**21.** In the order of termination, it is alleged that on account of negligent driving of the bus by the appellant workman the accident of the vehicle happened, the said allegation was neither proved in the inquiry required to be conducted nor producing evidence before the Labour Court by the respondent Corporation. Therefore, the High Court has failed to examine the above vital aspects of the case on hand and erroneously interfered with the award passed by the Labour Court in exercise of its extraordinary and supervisory jurisdiction under Articles 226 and 227 of the Constitution of India. This exercise of power is contrary to the law laid down by this Court in *Harjinder Singh v. Punjab State Warehousing Corpn.* [(2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] , wherein this Court held thus : (SCC p. 205, para 21)

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

‘10. ... the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.’

(*State of Mysore v. Workers of Gold Mines* [AIR 1958 SC 923] , AIR p. 928, para 10.)”

**24.** We are of the opinion that the view taken in Maharashtra SRTC [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] at para 36 after distinguishing Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is the plausible view. Therefore, we have to hold that the finding of the High Court in setting aside the finding of fact recorded by the Labour Court in its award by applying Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is wholly untenable in law. Therefore, the same is set aside by this Court.

**23.** Further, the reliance placed upon the decision of this Court on Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] by the High Court to reverse the finding of fact recorded in the award in favour of the workman in answering the points of dispute in the negative, is not tenable in law in view of the judgment of this Court in Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] , wherein, this Court after adverting to Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] at para 36, has held that the said case

“does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist”.  
(SCC p. 574)

Further, this Court held that : (SCC p. 574, para 36)

“36. ... Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.”

Reference may be taken of judgment of Hon’ble Supreme Court in the case of **Jaggo v/s Union of India reported in (2024) SCC Online SC 3826** , the relevant paragraphs of this judgment are being reproduced as follows:-

**“22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and**

*justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations. ....*

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

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

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

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

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

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

The principle laid down in the case of Jaggo (Supra) has been followed by Hon’ble Supreme Court in the case of ***Shripal Vs. Nagar Nigam Ghaziabad in Civil Appeal No. 8157/2024 (2025 INSC 144)***. The relevant portion of the said judgment is being reproduced as follows:-

**“12. The evidence, including documentary material and undisputed facts, reveals that the Appellant Workmen performed duties integral to the Respondent Employer’s municipal functions specifically the upkeep of parks, horticultural tasks, and city beautification efforts. Such work is evidently perennial rather than sporadic or project-based. Reliance on a general “ban on fresh recruitment” cannot be used to deny labor protections to long serving workmen. On the contrary, the acknowledged shortage of Gardeners in the Ghaziabad Nagar Nigam reinforces the notion that these positions are essential and ongoing, not intermittent. By requiring the same tasks (planting, pruning, general upkeep) from the Appellant Workmen as from regular Gardeners but still compensating them inadequately and inconsistently the Respondent Employer has effectively engaged in an unfair labour practice. The principle of “equal pay for equal work,” repeatedly emphasized by this Court, cannot be casually disregarded when workers have served for extended periods in roles resembling those of permanent employees. Long-standing assignments under the Employer’s direct supervision belie any notion that these were mere short-term casual engagements.**

**14. The Respondent Employer places reliance on Umadevi (supra) to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.**

**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**

**16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.**

**17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period. 18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:-**

**I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from thereof their termination, for all purposes, including seniority and continuity in service.**

**II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.**

**III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.**

**IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six**

**months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms.”**

The following observations of Hon ble Supreme Court in the case of **Dharam Singh V.s. State of U.P. SLP No. 8558/2018** are being reproduced as follows –

**“ Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non suit the appellants is misplaced. Unlike Umadevi (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State’s arbitrary refusals to sanction posts despite the employer’s own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in Jaggo v. Union of India<sup>4</sup> and in Shripal & Another v. Nagar Nigam, Ghaziabad<sup>5</sup> have emphatically cautioned that Umadevi (Supra) cannot be deployed as a shield to justify exploitation through long-term “ad hocism”, the use of outsourcing as a proxy, or the denial of basic 4 2024 SCC OnLine SC 3826. 5 2025 SCC OnLine SC 221. Civil Appeal No. 8558 of 2018 9 parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from Shripal (supra) have been reproduced hereunder:**

**“14. The Respondent Employer places reliance on Umadevi (supra)<sup>2</sup> to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are “illegal” and those that are “irregular,” the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged**

*asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.*

*15. It is manifest that the Appellant Workmen continuously rendered their services over several Civil Appeal No. 8558 of 2018 10 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 judgment of this court in in Jaggo v. Union of India<sup>3</sup> 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 Civil Appeal No. 8558 of 2018 11 characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations. ....*

*25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways: Civil Appeal No. 8558 of 2018 12 • 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 Civil Appeal No. 8558 of 2018 13 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.””

As we have observed in both *Jaggo (Supra)* and *Shripal (Supra)*, outsourcing cannot become a convenient shield to perpetuate precariousness and to sidestep fair engagement practices where the work is inherently perennial. The Commission's further contention that the appellants are not "full-time" employees but continue only by virtue of interim orders also does not advance their case. That interim Civil Appeal No. 8558 of 2018 15 protection was granted precisely because of the long history of engagement and the pendency of the challenge to the State's refusals. It neither creates rights that did not exist nor erases entitlements that may arise upon a proper adjudication of the legality of those refusals.

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

*sanction, whether in 1999 or upon reconsideration in 2003, rather than dispose of the matter on a mere technicality. The Division Bench of the High Court compounded the error by affirming the dismissal without engaging with the principal challenge or the intervening material. The approach of both the Courts, in reducing the dispute to a mechanical enquiry about “rules” and “vacancy” while ignoring the core question of arbitrariness in the Civil Appeal No. 8558 of 2018 16 State’s refusal to sanction posts despite perennial need and long service, cannot be sustained.*

*15. Therefore, in view of the foregoing observations, the impugned order of the High Court cannot be sustained. The State’s refusals dated 11.11.1999 and 25.11.2003, in so far as they concern the Commission’s proposals for sanction/creation of Class-III/Class-IV posts to address perennial ministerial/attendant work, are held unsustainable and stand quashed.*

*16. The appeal must, accordingly, be allowed.*

*17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it Civil Appeal No. 8558 of 2018 17 is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.*

*18. Moreover, it must necessarily be noted that “ad-hocism” thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If “constraint” is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.*

*19. Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the*

**material indicating vacancies and comparator regularisations, we issue the following directions:**

**i. Regularization and creation of Supernumerary posts: All appellants shall stand regularized with effect Civil Appeal No. 8558 of 2018 18 from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.**

**ii. Financial consequences and arrears: Each appellant shall be paid as arrears the full difference between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization /retirement/death, as the case may be. Amounts already paid under previous interim directions shall be Civil Appeal No. 8558 of 2018 19 so adjusted. The net arrears shall be released within three months and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.**

**iii. Retired appellants: Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgement.**

**iv. Deceased appellants: In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the arrears under clause (ii) up to the date of death, together with all terminal/retiral dues recalculated consistently with clause (i), within three months of this Judgement. v. Compliance affidavit: The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary of the U.P. Education Services Selection Commission or the prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgement. Civil Appeal No. 8558 of 2018 20 20. We have framed these directions comprehensively because, case after case, orders of this Court in**

*such matters have been met with fresh technicalities, rolling “reconsiderations,” and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of Civil Appeal No. 8558 of 2018 21 grace, but obligations under Articles 14, 16 and 21 of the Constitution of India.*

**Perusal of record** reveals that admittedly there have been as many as 14 vacancies of Barbers. Four vacancies in General Category and one in Schedule Caste category was advertised for the regular appointment in the year 2015. Case of the Management is that, these workmen were also given opportunity but they did not fulfill the age and qualification criteria. They were not permitted to appear.

**There is nothing on record** to show as to what whether the qualifications for appointment of Barbers when the applicants workmen in the case in hand were engaged.

This is also established that, no certificate in the course of Barber was ever required or is still required. The list of Barbers produced states that, most of them are at least Class 8<sup>th</sup> pass. The recruitment process of the Barbers when they were first engaged is also not produced. This is also established that these workmen have the requisite skill of a Barber be put in so many years in this job. In these circumstances, it was incompetent on the part of the Management to grant relaxation with respect to age and qualification of High School as it was mentioned in the recruitment notification of 2015 to give these workmen who had put in so many years as a Barber in service of Regimental Centre, hence it is established that, the Regimental Centre has adopted unfair labour practice in the case in hand as detailed above.

**Case of the Management** is that only five vacancies were fulfilled because the vacancies were released only for eight Barbers. **It gives rise to the inference that at least 06 vacancies are still available at present with the Management and is held accordingly.**

**This is also established that some of the workmen namely workman Motilal has attained the age of superannuation i.e. 60 years during the pendency of this reference. Hence, keeping all these facts in view and taking them in the light of settled preposition of law as mentioned earlier, it is in the interest of Justice that the Management of Regimental Centre be directed to initiate within a time frame of six months from the date of Award, a transparent and fair recruitment process for the remaining 06 vacant posts of Barbers with them granting relaxation with respect to age and educational qualification for the period they have worked as Barbers except those who have not yet attained the age of superannuation on the date of Award.**

**The Barbers who attained the age of superannuation during the pendency of the dispute, are held entitled to a lump sum amount of Rs. 5,00,000/- from the Management of establishment of Brigadier Mahar Regimental Centre, in lieu of all their claims.**

**Issue No. 4 is answered accordingly.**

**No other point was pressed.**

**On the basis of above discussion and findings, Award is passed as follows.**

#### **AWARD**

**Holding that, the Management of Brigadier Regimental Centre, Sagar and Station Staff Officer of the Station Headquarter, Sagar have adopted unfair labour practice by way of taking the services of the Workmen in the cases through Outsourcing Agencies as Contract workers for years and years in spite of the fact there were vacant posts of Barbers with the Management, they are directed to initiate within a time frame of six months from the date of Award, a transparent and fair recruitment process for the remaining 06 vacant posts of Barbers with them granting relaxation with respect to age and educational qualification for the period they have worked as Barbers and have not yet attained the age of superannuation on the date of Award.**

**The Barbers who attained the age of superannuation during the pendency of the dispute, are held entitled to a lump sum amount of Rs. 5,00,000/- (Rupees Five lacs) from the Management of establishment of Brigadier Mahar Regimental Centre, in lieu of all their claims.**

**No order as to cost.**

**DATE:-24/04/2026**

**(P.K.SRIVASTAVA)  
PRESIDING OFFICER**