THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,

JABALPUR, (M.P.)

NO. CGIT/LC/R/27/2022

Present: P.K.Srivastava

H.J.S..(Retd)

1. **Shri Mayur Bhandekar,**
   S/o Mr. Bhimrao Somaji Bhandekar,
   Friends Nagar, Near LIC Colony,
   Behind Biney Dresses,
   Mowa, Raipur (C.G.)- 492007

Workman

Vs

1. **The Additional Director,**
   Central Govt. Health Scheme (CGHS),
   1st Floor, Swasthya Bhawan,
   near T.V. Tower, Seminary Hills,
   Nagpur (M.H.)- 440006

2. **The President,**
   M/s Sidhivinayak Bahuddeshiya Seva
   Sahkari Sansthan Maryadit, 74,
   Jai Bajrang Society, behind Vetenary College,
   Seminary Hills, Nagpur- 440006

Management

(JUDGMENT)

(Passed on this 15th day of December, 2025)

As per letter dated 25/01/2022 by the Government of India, Ministry of Labour, New Delhi, the reference has been made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act')as per Notification **No. 24(02)/2022-IR** dt. 25/01/2022. The dispute under reference relates to:

"Whether the action of the Management of Additional Director, Central Govt. Health Scheme (CGHS), Nagpur through its Contractor M/s Sidhivinayak Bahuddeshiya Seva Sahkari Sansthan Maryadit, Nagpur (MH) by terminating the services of Shri Mayur Bhandekar S/o Mr. Bhimrao Somaji Bandekar, DEO engaged at CGHS Dispensary (Wellness Centre-I) at Raipur (CG) is legal & justified, if not, what relief the workman is entitled to?"

After registering the case on the basis of reference, notices were issued to the parties. They appeared and filed their respective statement of claim in defense.

The case of the workman, as taken by him in his statement of claim, is mainly that he was a Data Entry Operator, working with the establishment of Central Govt. Health Scheme (CGHS) in their CGHS Dispensary (Wellness Centre-I) at Raipur (CG) which is under supervision and control of Ministry of Health and Family Welfare, Government of India. He worked there for more than three years continuously and regularly i.e. from 02.12.2017 to 15.02.2021, when his services were terminated without following due process of law without any notice or compensation. He raised a dispute

with the concerned Labour Commissioner (Central), which was referred to this Tribunal for adjudication after failure of conciliation, his work as Data Entry Operator was maintenance of frequent short term day to day issues arising in the hardware and software, uploading the application data and photographs for making plastic cards, online registration of patients, uploading online data reports and other works as specified by him in para 4 of his statement of claim. His work was supervised by the Officers and Employees of C.G.H.S., his transfer, joining from one office to other office and all other controls were directly done by the C.G.H.S. without any intervention of anybody, his attendance was also made in biometric system maintained by C.G.H.S. for their other regular and permanent employees. It is further the case of the workman that the outsourcing agency through which he was shown to have been engaged, is simply a camouflage and deceptive method adopted by C.G.H.S. to deny the workman his legally admissible rights under the Act when he has been working under the control, management, supervision and direction of the Officer of C.G.H.S. in their Office. His work has been of permanent and perennial nature which is still being done by someone other in his place and he has been discharging duties like a permanent employee of C.G.H.S. working on the same post.

Further, as alleged by the workman, the management of C.G.H.S. has adopted unfair labour practice by engaging him on contract through outsourcing agency for a work of permanent and perennial nature which is prohibited under the Act and the Code as well. This action of management is also in violation of section 7 &12 of the *Contract Labour (Regulation & Abolition) Act, 1970*

because neither Department of C.G.H.S. is registered as a Principal Employer nor is the outsourcing agency, a licensed contractor, as required under section 7 & 12 of this Act. The workman has thus prayed that setting aside his termination, dated 25.02.2021 holding it illegal and arbitrary, he be reinstated to the post with back wages and benefits and also be held entitled to permanent status as an employee of C.G.H.S.

The C.G.H.S. has filed its written statement of defense in which they have taken a plea that the workman was appointed by outsourcing agency, M/s Sidhivinayak Bahuddeshiya Seva Sahkari Sansthan Maryadit as Data Entry Operator and was deputed to work with C.G.H.S. He was getting salary from the outsourcing agency and was terminated by the outsourcing agency. It was further pleaded that the workman was not appointed by C.G.H.S. and there is no sanctioned post for Data Entry Operator with them in Raipur.

The outsourcing agency, did not appear and did not contest the case in spite of service of notice.

During the proceeding, none appeared from C.G.H.S. also, hence the case proceeded *ex-parte* against the C.G.H.S. and the outsourcing agency.

In evidence, the workman has filed his affidavit as his examination-in-chief, he has filed and proved documents, to be referred to as and when require.

I have heard argument of Mr. Praveen Yadav, Learned Counsel for workman. None appeared for any of the managements. I have gone through the record as well.

Before entering into any discussion some relevant provision are required to be reproduced which are as follows:-

2(j) "industry" *means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;*

2(k) "industrial dispute" *means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;*

2 (oo) "retrenchment" *means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of

employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;

11A. ***Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.****—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.*

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. ……..

2. ……..

3. ……..

4. ……..

5. ……..

6. ……..

7. ……..

8. ……..

9. ……..

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. ……..

12. ……..

13. ……..

14. ……..

15. ……..

16. ……..

***25T. Prohibition of unfair labour practice**.—No employer or workman or a trade union, whether registered under the Trader 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.*

On perusal of his unrebutted affidavit, which is corroborated with documents Annexure-W/1 to W/36, case of the workman as stated above, is held proved.

Judgment of ***Hon'ble High Court of Delhi at New Delhi in W.P.(c) No. 2133/2020 with connected Writs and Applications in the case of Director, C.G.H.S. v/s Shri Ram Chandra and others***, has been referred to in this respect. In this case the order of C.G.I.T., Delhi in granting regular and permanent status to the respondents/workmen who were also placed as Data Entry Operators in various Office/Wellness Centres of C.G.H.S. in Delhi through outsourcing agency in similar situation and facts was upheld by Hon'ble Single Bench of High Court. The workman in this case, as submitted by Learned Counsel, is entitled to parity with the other workmen having the same case as mentioned above.

The second argument of learned counsel for the workman is that the outsourcing agreement itself is bad in law and is sham agreement because it is a prohibited agreement under ***Contract Labour (Regulation & Abolition) Act, 1970*****,** he has referred to section 10 of the Act which is being reproduced as follows:-

"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.

Explanation.- If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

The learned counsel further submits that it is established that there is a vacancy of permanent nature with the C.G.H.S., hence, contract labour could not be engaged for it, **secondly**, there is nothing to show that C.G.H.S. are registered as a principal employer, hence, not authorized to engage contract manpower on outsourcing basis through outsourcing agency, also that he has

been working as outsourcing employee through outsourcing agency on the same post for another years.

Learned counsel also submits that engaging Badli, Casual or Temporaries employees on permanent post is unfair labour practice as defined in the Act and is prohibited in the Act, hence, on this score also the outsourcing agreements are sham contracts and contractors are sham contractors engaged just to flout law in this respect. Learned counsel also submits that adopting unfair labour practice by employer is a crime under the Act. This Tribunal is within its powers to undo the civil consequences of such an unfair labour practice.

Learned counsel as further referred to 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 appellant 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 appellant 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 adverting 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."

The referred case can be distinguished from the facts in hand that the workman was held not contractual employee rather was found the regular employee of the management but the principles laid down by Hon'ble Court are of much significance.

Since, in the case in hand, it is unrebutted that the workman ***firstly***, is qualified for the post, ***secondly***, has been working for a long period as a contract worker through contractor under the supervision, control and direction of C.G.H.S. for work of permanent and perennial nature. Hence, the establishment of C.G.H.S. is held to be adopting unfair labour practice in the case in hand. **The workman in present case, is also held entitled to the same relief as affirmed by the Hon'ble High Court of Delhi in their Single Bench judgment with respect to the similarly placed Data Entry Operators of C.G.H.S.**

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:

- ***<u>Misuse of "Temporary" Labels</u>:- 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.***

- ***<u>Arbitrary Termination</u>:- 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.

- ***<u>Lack of Career Progression</u>:- 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.***

- ***<u>Using Outsourcing as a Shield</u>:- 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.***

- ***<u>Denial of Basic Rights and Benefits:-</u> 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 ***<u>Shripal Vs. Nagar Nigam Ghaziabad in Civil Appeal No. 8157/2024 (2025 INSC 144).</u>*** 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."

Reference of another jugdment of Hon'ble Supreme Court in the case of ***Hochtief Gammon v. Industrial Tribunal*****, 1964 SCC OnLine SC 148 : (1964) 7 SCR 596 : (1965) 1 SCJ 292 : AIR 1964 SC 1746** is necessary .The relevant portion of the judgment is being reproduced as follows-

"8. Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing with the said points, deal with matters incidental thereto, and……."

In the light of above discussion and findings the reference is answered as follows:-

AWARD

Holding that the management of C.G.H.S. has adopted unfair labour practice with respect to the applicant workman by taking work from him for years as an outsourced employee on

contract when the vacancy is of permanent nature and is still available, the management of C.G.H.S. is directed to reinstate the workman but without backwages and initiate a fair and transparent process for his regularization for the position on which, he has been working, within six months from the date of Award. The management of C.G.H.S. shall expedite all necessary administrative processes to ensure that such longtime employees are not indefinitely retained on contractual assignments or through outsourcing, contrary to statutory and equitable norms. No order as to cost.

Copy of this judgment be sent to the Ministry and to the parties.

DATE:- 15-12-2025

(P.K.SRIVASTAVA)

PRESIDING OFFICER