

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,**  
**JABALPUR [M.P.]**

**NO. CGIT/LC/R/33/2023**

**Present: P.K.Srivastava**

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

**Devi Lal @Deva,  
H No. 42, Suraj Nagar, Sewaniya Gond,  
Huzur Bhopal,  
Bhopal (M.P.)- 462001**

**Workman**

**V/s**

**Indra Gandhi Rashtriye Manav Sanghralay,  
Shyamla Hills, Bhopal,  
Bhopal, Madhya Pradesh-462001**

**Management**

**(JUDGMENT)**

**(Passed on this 16th day of February, 2026)**

As per letter dated **31/03/2023** 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. **RLC-8(38)/2022** dt. **31/03/2023**. The dispute under reference relates to:

***“Whether the action of the management of Indira Gandhi Rashtriya Manav Sangrahalaya Bhopal to terminate the services of Shri Devil Lal @ Deva is legal and justified? If not then what other benefits the workman is entitled to along with reinstatement?”***

**Case of the Workman**, taken by him in his statement of claim, is mainly that, he was first appointed with the management on 01.03.2001 as daily wager on monthly salary of Rs. 12,096/- as a Gardner and worked continuously till 01.06.2020 with the management, his services were terminated orally on 01.06.2020. He worked continuously for 240 days and more in every year. Since, he was not given any notice pay or compensation at the time of

termination of his service, this action of management is in violation of section 25-F and 25-G of the Act, hence is unjust, illegal and arbitrary.

He has prayed that holding the action of management in terminating his services against law, he be held entitled to be reinstated with back-wages and benefits.

**Case of the management of Indira Gandhi Rashtirya Manav Sangrahalaya, Bhopal** is mainly that they are an Institution under Ministry of Culture, Government of India, engaged for preservation and promotion of the Tribal art and culture. They are not involved in any commercial activities hence, neither are they 'industry' as defined under the Act nor is the applicant a 'workman' under the Act, hence the reference itself is not cognizable in the case in hand. It is further their case that the museum is spread over 200 acres of land and its maintenance is done by labour supplied by outsourcing agencies, the applicant was also provided by the outsourcing agency M/s Isha Protective Security Guard Pvt. Ltd., Bhopal in the year 2020. Due to certain situation, they had to shorten their expenditure and requested the outsourcing agency to decrease manpower supplied to them, it might be that the workman was disengaged by outsourcing agency. Thus according to management, they are not an industry, applicant is not a workman under the Act and there is no relation of employer-employee between the parties. Management has requested that the reference be answered against the applicant workman.

**In its rejoinder**, the workman has alleged that the management is involved in commercial activities, It prepares different articles and manufacture them as well markets them and earn profit by selling it products. They also charge fees for entering their campus, they have nothing to do with promotion and Tribal art and culture hence, they are an industry under the Act and the applicant is workman under the Act because he has been doing job of a Gardner with the management in maintaining their vast campus, his work was planting and maintaining the plants and trees, cutting the grass, etc. The applicant has also denied that he worked with any outsourcing agency as pleaded by the management rather he has been under continuous engagement of the management.

**In evidence**, the applicant side has filed muster rolls with respect to employees since 2001 to 2020, obtained by him under RTI. He has further filed his ESIC card, EPF slip, certified statements of Bank account, wage slips.

He has further filed his affidavit as his Examination-in-chief and has been cross-examined by management. Management has not filed any evidence.

**I have heard argument** of Learned Counsel for the Workman, Mr. Viday Raj Malviya and Mr. Vikram Singh, Learned Counsel for Management. I have gone through the record. Both the parties have filed written submissions, which are part of record. I have gone through the written submissions and record as well.

On perusal of record, in light of rival submissions, following issues come up for determination:-

1. ***Whether the management is 'industry' and applicant is 'workman' under the Act?***
2. ***Whether the management has adopted unfair labour practice in engaging contract labour for 20 years and more for the same work just with a view to deny the worker his legitimate claims?***
3. ***Relief to which the workman may be entitled ?***

**Issue No. 1:-**

It has been submitted on behalf of the management that since they are involved in promotion of Tribal art and culture, they are doing their job without any motive of profit hence, they are not an industry and the applicant is not a workman under the Act, reference of ***Judgment of Hon'ble Supreme Court in case of Bharat Bhavan Trust v/s Bharat Bhavan Artists Association & others in Civil Appeal No. 5614/2001*** has been taken in this respect.

On the other hand, it has been submitted from the side of workman that he was engaged in the work of maintenance and gardening, watering the plants, cleaning the gardens, grass cutting, planting new plants, it comes under the skill category of manual work. Furthermore, the management is engaged in commercial activities of

manufacturing and selling its products in market and also charging visitors for the visit of its campus hence, they are 'industry, and the applicant is a 'workman' under the Act.

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 employees, 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;**

Now coming on the case in hand, the management is involved in the production and selling of its products manufactured by them and also charged visitors for visit of their campus. These allegations have been corroborated by the affidavit of the workman filed as his Examination-in-chief. He has been cross-examined by management and there is nothing in his cross-examination to discredit his statement.

**The Judgment** of Hon'ble Apex Court in the case of Bharat Bhavan Trust (*supra*) can be distinguished on facts, in the referred case, Hon'ble Supreme Court found that the Bharat Bhavan Trust was involved only in engaging artist for cultural activities just for promotion of art and culture. Hence, they were not held to be an industry under the Act, whereas in the case in hand, it is proved by cogent evidence that the management is engaged in commercial activities from manufacturing and selling of its products and by way of charging fees on visit of their campus. Hence, in light of law propounded by **Constitutional Bench of Hon'ble Apex Court in Bangalore Water Supply & Sewerage Board v/s A. Rajappa & Ors., (1978) 2 SCC 213**, the management is held to be an industry under the Act .

As regards to the argument as to whether the applicant is a workman as defined under the Act or not, ***Hon'ble High Court of Bombay in the case of Union Carbide (India) Ltd. V.s. Ramesh Kumbla and Others reported in MANU/MH/0073/1999 and another judgment of the same High Court in the case of Union Carbide (India) Ltd. V.s. D. Samuel and Others reported in MANU/MH/1713/1998***, may be referred in this respect. In these two cases, after analyzing the judgment of various High Courts and Hon'ble Supreme Court, the Single Bench of Hon'ble Bombay High Court has summarized the principles on the basis of which it is to be decided whether the Applicant is in supervisory capacity or not. These tests mentioned in **Para 34 and 35** of the Judgment are being reproduced as follows:

**Para-34. In so far as the Apex Court is concerned, some of the tests laid down are:**

- (1) Designation is not material but what is important is the nature of work.**
- (2) Find out the dominant purpose of employment and not any additional duties the employee may be performing.**
- (3) Can he bind the Company/employer to some kind of decisions on behalf of the Company/employer.**
- (4) Has the employee power to direct or oversee the work of his subordinates.**
- (5) Has the power to sanction leave or recommend it; and**
- (6) Has he the power to appoint, terminate or take disciplinary action against workmen.**

**Para-35. From the judgment of this Court and the other High Courts some of the tests apart from what the Apex Court has stated are:**

- (a) whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;**
- (b) Does the employee have powers of assigning duties and distribution of work;**
- (c) Can he indent material and distribute the same amongst the workmen;**

- (d) Even though he has no authority to grant leave does he have power to recommend leave;**
- (e) Are these persons working under him;**
- (f) Has he the power to supervise the work of men and not merely machines;**
- (g) Does he mark the attendance of other employees;**
- (h) Does he write the confidential reports of his subordinates.**

The judgment of Hon'ble Supreme Court in the case of **S.K. Maini vs. M/s. Carona Sahu Company, (1994) 3 SCC 510**. Para 9, 10 & 11 of this judgment are being reproduced as follows :-

**“9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn.* [(1970) 3 SCC 378 : (1971) 2 SCR 758 : (1970) 2 LLJ 590] In *All India Reserve Bank Employees' Assn. v. Reserve Bank of India* [(1965) 2 LLJ 175 : AIR 1966 SC 305 : (1966) 1 SCR 25] it has been held by this Court that the word ‘supervise’ and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the**

*learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act.*

*10. In Mcleod and Co. v. Sixth Industrial Tribunal, W.B. [AIR 1958 Cal 273] P.B. Mukharji, J. of the Calcutta High Court as the learned Chief Justice then was, observed that whether a person was a workman within the definition of the Industrial Disputes Act would be the very foundation of the jurisdiction of the Industrial Tribunal. The court further observed that in order to determine the categories of service indicated by the use of different words like 'supervisory', 'managerial' and 'administrative', it was not necessary to import the notions of one into the interpretation of the other. The words such as 'supervisory', 'managerial' and 'administrative' are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define whether supervision ends and management begins or administration starts. For that would be theoretical and not practical. It has to be broadly interpreted from a common sense point of view whose tests will be simple both in theory and in their application. The learned Judge further observed that a supervisor need not be a manager or an administrator and a supervisor can be a workman so long as he did not exceed the monetary limitation indicated in the section and a supervisor irrespective of his salary is not a workman who has to discharge function mainly of managerial nature by reasons of the duties attached to his office or of the powers vested in him. The aforesaid decision of the Calcutta High Court was noted with approval by this Court in National Engineering Industries Ltd. v. Shri Kishan Bhageria [1988 Supp SCC 82 : 1988 SCC (L&S) 428 : AIR 1988 SC 329].*

11. It may be noted in this connection that in view of the amendment of Section 2(s) enlarging the ambit of the classification of various types of workmen except managerial force, entire labour force has been included within the definition of workman under Section 2(s) as has been indicated by this Court in *S.K. Verma v. Mahesh Chandra* [(1983) 4 SCC 214 : 1983 SCC (L&S) 510 : (1983) 3 SCR 799] . But if the principal function is of supervisory nature, the employee concerned will not be workman only if he draws a particular quantum of salary at the relevant time as indicated in Section 2(s). In the instant case, it, however, appears to us that Shri Maini as Manager/In-charge of the shop was made responsible and liable to make good such amount of credit whether such sale on credit had been made by him or by any other member of the staff in employment under him with or without his knowledge. Under the terms and conditions of service, he was asked to take charge of the shop to which his service was transferred. Mr Maini, under the terms and conditions of service, was required to be held responsible and liable for any loss suffered by the Company due to deterioration of the quality of the stock or any part thereof and loss of any of the other articles lying in the shop caused by reason of any act of negligence and/or omission to take any precaution by the employees. Mr Maini was also required to notify the Company by trunk call and/or telegram not later than three hours after the discovery in the said shop of any fire, theft, burglary, loot or arson. He was required to investigate into the matter immediately and get the cause and amount of loss established by local authorities. Mr Maini as in-charge of the shop was required to keep and maintain proper accounts as approved by the Company indicating the exact amount to be paid from the receipts from the respective staff. Under Clause XIII of the terms and conditions of the service, Mr Maini would remain fully responsible to the Company for damages or loss caused by acts or commission of the loss of the employees of the shop. Under Clause XV of the terms and conditions of service, the shop in-charge was required to keep himself fully conversant with all the regulations in force which may come into force from time to time with regard to Octroi, Sales Tax and Shops and Commercial Establishments Act and/or any other local regulation applicable to the shop. Clause XXI indicates that non-compliance with any of the local or State Acts or Central Acts would be viewed seriously and Manager would be held responsible for any fine/penalty imposed and/or prosecution launched against the Company. It also appears that in the event of a salesman being absent, the shop in-charge is

*empowered to appoint temporary helper for the said period to work as acting salesman. Similarly, in the event of helper being absent, the shop manager is also empowered to appoint part-time sweeper and to entrust the work of a helper to a sweeper. Such functions, in our view, appear to be administrative and managerial. By virtue of his being in-charge of the shop, he was the principal officer-in-charge of the management of the shop. We therefore find justification in the finding of the High Court that the principal function of the appellant was of administrative and managerial nature. It is true that he himself was also required to do some works of clerical nature but it appears to us that by and large Shri Maini being in-charge of the management of the shop had been principally discharging the administrative and managerial work. A manager or an administrative officer is generally invested with the power of supervision in contradistinction to the stereotype work of a clerk. This Court in *Lloyds Bank Ltd. v. Panna Lal Gupta* [(1961) 1 LLJ 18 : AIR 1967 SC 428] has indicated that a manager or administrator generally occupies a position of command or decision and is authorised to act in certain matters within the limits of his authority without the sanction of his superior. In the instant case within the authority indicated in the terms and conditions of his service, Shri Maini was authorised to take decisions in the matter of temporary appointments and in taking all reasonable steps incidental to the proper running of the shop. Precisely for the said reason, Shri Maini had signed the statutory forms as an employer. It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. The unit in a local shop may not be large but management of such small unit may fulfil the requirements and incidences of managerial functions. On a close scrutiny of the nature of duties and functions of the Shop Manager with reference to the admitted terms and conditions of service of Shri Maini, it appears to us that the High Court was justified in holding that the appellant was not a workman under Section 2(s) of the Industrial Disputes Act. In the aforesaid facts, it is not necessary to go into the question as to whether or not domestic enquiry had been properly conducted or the Enquiring Officer had acted with bias. It is also not necessary to decide for the purpose of the disposal of the appeal as to whether or not the Company was entitled to lead fresh evidence in support of the domestic*

***enquiry before the Labour Court. The appeal is, therefore, dismissed without, however, any order as to cost.”***

In another case of ***Vandana Joshi vs. Standard Charter Bank MANU/MH/1391/2010***, decided by Hon'ble High Court of Bombay it has been laid down ***that the question as to whether the employee is a applicant or not must be decided with reference to the dominant nature of the duties and responsibilities performed by employee.***

In the case of ***Arkal Govind Rao vs. Ciba Geigy of India, reported in (1985) 3 SCC 371***, it was held that ***the person concerned would not cease to be a applicant if he performs some supervisory duty but he must be a person engaged in supervisory duty and the test to be employed is what was the primary, basic or dominant nature of duties for which the person whose status is under inquiry was employed.***

**Now analyzing the evidence in the case in hand** on the basis of tests laid down in the aforesaid Judgments, it comes out that the role and duties of the Applicant qualify him to be a workman under the Act. There is nothing on record to show that the workman was working in any managerial or supervisory capacity. **Hence the applicant is held to be a workman as defined under section 2(s) of the Act.**

***Issue No. 1 is answered accordingly.***

#### **Issue No -2**

The workman has alleged that he was employed by the management in the year 2001 and worked as an employee of management till 2020. Case of management is that, he was engaged by an outsourcing agency, which were given contract of maintenance of the campus right from 2001 till date, the workman himself has filed RTI documents with respect to muster roll, which goes to show that these muster rolls belong to different outsourcing agencies with which the workman had worked as an employee and also worked on the site of the management. His documents in form of his PF slips, ESIC slips also support this fact. Management has also filed the same muster rolls to show that the workman was employed by different outsourcing agencies during this period though, worked on the site of management.

Since, it is not the case of the workman that the outsourcing agencies were sham and camouflage, used as a smoke screen to hide the facts that infact he was under effective control and supervision as well worked under the directions of the management, the argument of Learned Counsel for workman that the outsourcing agreements are camouflage cannot be accepted. Moreover, there is no evidence in support of this fact in the statement of the workman. Since, neither it is in the pleadings nor in evidence that the outsourcing contracts were camouflage, the **Judgment of Hon'ble Supreme Court in the case of All India Statutory Corporation v/s United Labour Union & Ors., Civil Appeal No. 15536/1996** and other appeals as well, the Judgment in case of **Hussainbhai, Calicut v/s Alath Factory Thozhilali Union, Kozhikode & Ors., (1978) 4 SCC 257**, and **The Workman of Neelgiris Co-operative v/s State of Tamil Nadu, (2001) 1 LLJ 1095 Mad**, do not help him.

It is established that when the service of the workman was terminated, he was working on contract basis engaged by outsourcing agencies. He was terminated by outsourcing agency under whom he was working.

Hence he may claim any relief from outsourcing agency which terminated him but they are not a party in this reference.

**Section 2(ra) of the Act 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**

*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.*

**Section 10 Contract Labour (Regulation & Abolition) Act, 1970**, 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.”

It is established that there is a vacancy of permanent nature with the management hence, contract labour could not be engaged for it.

Since, 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, outsourcing agreements are just to flout law in this respect in fact.

In the light of above facts and circumstances, it is held proved that the management has adopted unfair labour practice by way of engaging the workman as an outsourcing employee for

more than 20 years just with a view to deny him his legally admissible claims.

***Issue No.-2 is answered accordingly.***

**Issue No.-3**

**Unfair labour practice is prohibited under the Act. It is punishable as a crime.**

**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.*

*This Tribunal is well within its powers to undo the civil consequences of such an unfair labour practice.*

Following paragraphs of the judgment of Hon'ble Supreme Court in case of, **Sudarshan Rajpoot v/s U.P. State Road Transport Corporation (2015) II, SCC 317**, 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 was 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. Furthis, 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.”**

It is a established from evidence that the applicant workman was first appointed by outsourcing agencies and his services were taken by management as an outsourced employee supplied by the outsourcing agencies who had employed the workman on contract extended on yearly basis.

**By not employing a person 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.**

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 judgment 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."***

In the case of *The Municipal Council, Rep. By Its Commissioner Nandyal Municipality, Kurnool District, A.P. v/s K. Jayaram and Others etc. Etc., 2026 Live Law (SC) 38, Hon'ble the Apex Court*, has laid down that outsourced employees cannot be regularized by the principal employer because there is no relation of employer-employee between the principal employer and the employee. Hon'ble Supreme Court, issued direction to management in that case to consider regularization of the workman if he was found otherwise fit. The relevant portion of the said Judgment is being reproduced as follows:-

*“Having passed the order, we feel that sometimes justice is required to be tempered with mercy as human factors cannot be totally lost sight of. In such view of the matter, we would require the appellant to look into whether the jobs which were being done by the respondents, in the background that they have not been disengaged or returned to the contractor on the ground of being unsatisfactory, having uninterrupted service under the appellant for decades can be regularized on posts, which prima facie appears to be perpetual in nature. We make it clear that this direction is limited for the purposes of the present case only as it has been passed in the special facts and circumstances of the present case and shall not be treated as a precedent in any other case. We expect the appellant to take a compassionate and sympathetic view in the matter.”* Almost similar are the facts in the case in hand.

In the light of above proposition of law, the workman is held entitled to be considered for regularization.

**Issue No.-3 is answered accordingly.**

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

**AWARD**

*The management is directed to initiate a fair and transparent process for regularizing the Workman within six months from the date of judgment duly considering the fact that he has performed perennial duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retrospectively if such requirements were never applied to the Workman 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 that longtime worker is not indefinitely retained on outsourcing contrary to statutory and equitable norms.*

**No order as to cost.**

**DATE:- 16-02-2026**



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