IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE AMRITA SINHA

WPA/484/2023
IA No.CAN/1/2025

MOSAI PUSHPA RAJ AND ANOTHER ... PETITIONERS

Vs.

UNION OF INDIA AND OTHERS ... RESPONDENTS

With

WPA/485/2023
IA No.CAN/1/2025

SMTI SOMA CHOUDHURY AND OTHERS ... PETITIONERS

Vs.

UNION OF INDIA AND OTHERS ... RESPONDENTS

For the petitioners	:	Mr. Gopala Binnu Kumar Ms. Vinita Devi
For the respondent Nos. 1-4	:	Mr. Rakesh Kumar
For the respondent No. 5	:	Mr. V.D. Sivabalan
Heard and reserved on	:	August 27, 2026
Judgment delivered on	:	September 3, 2026
Judgment uploaded on	:	September 3, 2026

AMRITA SINHA, J.

1. WPA/484/2023 has been filed by two petitioners serving as daily rated employees and WPA/485/2023 has been filed by three petitioners who are working as Data Entry Operator in the office of the District and

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Sessions Judge, Andaman and Nicobar Islands for more than ten years at a stretch.

2. The petitioners pray for regularization of their service on and from their initial date of appointment and all consequential benefits. As the petitioners claim to be similarly placed and seek similar relief, both the writ petitions were directed to be tagged and were heard analogously. Both the writ petitions are disposed of by this common judgment.

3. The petitioners in WPA/484/2023 were intimated by a notice in the year 2011 by the Superintendent, District and Sessions Court, Port Blair that their name was sponsored by the employment exchange for considering appointment as DRM (Peon)/Mazdoor on daily rated basis for a short duration of six months in the establishment of the District and Sessions Judge, Andaman and Nicobar Islands, Port Blair. The said petitioners were required to appear before the Selection Committee in the office of the learned Additional District and Sessions Judge, Port Blair for a personal interview. The petitioners were required to carry with them certificates and testimonials in original along with attested copies thereof.

4. The petitioners attended the interview and appeared before the Selection Committee. In November, 2011, the petitioners were intimated by Office Order issued by the District and Sessions Judge, Andaman and Nicobar Islands, Port Blair that they were appointed as Mazdoor on

daily rated basis in the establishment of the District and Sessions Judge, Andaman and Nicobar Islands, Port Blair for a period of three months. The Office Order clearly specified that they would not be entitled to claim regular appointment or continuation in daily rated employment and the District and Sessions Judge, Andaman and Nicobar Islands, Port Blair reserved the right to disengage them at any time in course of employment.

5. During their engagement, the petitioners were assigned various duties under the District and Sessions Judge, Andaman and Nicobar Islands, Port Blair. One of the petitioners was assigned duties in the account section of the learned Civil Judge, Senior Division, Port Blair and also assigned duties in the district record room of the Judicial Magistrate First Class-II at Port Blair.

6. The petitioners in WPA/485/2023 responded to an employment notice published in the daily newspaper in January, 2012 by the learned District and Sessions Judge, Andaman and Nicobar Islands, Port Blair for filling up of three posts of Data Entry Operator in the office of the District and Sessions Judge, Andaman and Nicobar Islands, Port Blair. Application in sealed envelope in the prescribed proforma was submitted along with testimonials and certificates. The selection procedures mentioned about a trade test being conducted to determine data entry speed and accuracy.

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7. Being successful in the selection process, the petitioners were appointed in April, 2012 and January, 2013 as Data Entry Operator on daily rated basis for a period of three months. The appointment letters contained similar clauses of not claiming regular appointment or continuation in daily rated employment.

8. Both sets of petitioners have been renewed in service from time to time and by the time the writ petitions were filed, they completed ten years of unblemished continuous service.

9. The petitioners submit that the service rendered by them is perennial in nature and integral to the organization. The authority, being satisfied with the performance of the petitioners, extended their service from time to time. The same implies that there is a requirement and necessity of the service of the petitioners. The service of the petitioners is same as that of the regular employees but the petitioners are not paid the regular scale.

10. The petitioners contend that they were appointed after regular selection process being conducted. Their service cannot be said to be backdoor illegal appointment. The authority ought to take steps for regularizing their service in terms of the dictum laid down by the Constitutional Bench of the Hon'ble Supreme Court, in the matter of ***Secretary, State of Karnataka and Others vs. Umadevi (3) & Others*** reported in ***(2006) 4 SCC 1.***

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11. It has also been submitted that the petitioners ought to be paid 1/30th of pay plus dearness allowances at the minimum of the relevant pay scale for discharging the duties and responsibilities of regular employee in terms of the Office Memorandum dated 07th June, 1988 issued by the Ministry of Personnel, Public Grievances, Department and Training.

12. The Office Memorandum dated 07th June, 1988 has been placed wherein it has been specifically mentioned that persons on daily rated basis should not be recruited for work of regular nature. Where the nature of work entrusted to the daily wagers and regular employees is the same, the daily wagers may be paid at the rate of 1/30th of pay plus dearness allowances at the minimum of the relevant pay scale for work of eight hours a day.

13. Specific case of the petitioners is that as they have rendered continuous, uninterrupted, satisfactory service for more than a decade, the authority ought to consider their prayer for regularization and all consequential benefits.

(i) ***Jaggo vs. Union of India*** reported in ***(2024) SCC OnLine SC 3826***.

(ii) ***Vinod Kumar and Others vs. Union of India*** reported in ***2024 INSC 332***.

(iii) ***Union of India Rep by Government of Puducherry and Another vs. K. Velajagan and Others*** reported in ***(2025) SCC OnLine SC 837***.

(iv) ***Dharam Singh and Others vs. State of UP*** reported in ***(2025) SCC OnLine SC 1735***.

(v) ***Bhola Nath vs. State of Jharkhand and Others*** reported in ***(2026) SCC OnLine SC 129***.

(vi) ***Mohammad Sagir and Others vs. Nagar Nigam Kanpur*** reported in ***(2026) SCC OnLine SC 473***.

(vii) ***Sukhendu Bhattacharjee and Others vs. State of Assam and Others*** reported in ***(2026) SCC OnLine SC 909***.

14. The respondents oppose the prayer for regularization and grant of consequential relief as sought for by the petitioners. It has been submitted that as and when the learned District and Sessions Judge, Andaman and Nicobar Islands, Port Blair required support staff, the said respondents approached the local Administration. For providing support to the Court, the Administration accepted the proposal of the learned District and Sessions Judge, Andaman and Nicobar Islands, Port Blair and sought for names of eligible candidates from the local employment exchange. Public advertisement was also floated in the local newspaper calling for application from eligible candidates for performing

the duties as per the requirement of the learned District and Sessions Judge, Andaman and Nicobar Islands, Port Blair.

15. As there were no sanctioned posts where the petitioners could be appointed and as there was requirement of handling the increased work load of the Court, accordingly, the respondent authority had to engage the petitioners as stop gap arrangement on daily rated basis for a stipulated time period.

16. The respondents though admit that the service of the petitioners stood extended from time to time and there is no complaint as regards their performance, but at the same time it has been contended that, regular extension does not bestow any right upon the petitioners to claim regularization.

17. It has been argued that the petitioners, on the very first day of their appointment, were made aware by incorporating necessary clause in their appointment letter that their service was meant for a particular period and they were not entitled to claim regular appointment or continuation in employment. After having accepted such terms and conditions in their appointment letter, the petitioners would be estopped from making the prayer for regularization.

18. It has been argued that the judgment delivered by the Hon'ble Supreme Court in the matter of Umadevi (supra) stands as a bar to seek regularization. The respondents pray for dismissal of the writ petitions.

19. I have heard and considered the submissions of both the parties and have perused the materials on record.

20. It is admitted that the petitioners were provided appointment after a regular selection process was conducted. There were several candidates who participated in the selection process. Apart from fulfilling the minimum educational qualification and the prescribed age criteria, the Data Entry Operators were required to appear in a trade test for assessment of their speed and accuracy. Only after they were successful at all stages, the petitioners were offered appointment.

21. It may be that the posts in which the petitioners were appointed and are functioning for more than ten years have not been sanctioned by the authorities but it cannot be lost sight of the fact that the service rendered by the petitioners is absolutely integral and essential for the day-to-day functioning of judicial work in the office of the learned District and Sessions Judge, Andaman and Nicobar Islands, Port Blair. The service rendered by the petitioners is no less compared to the regular employees. In fact, the petitioners are providing far more service than the other regular employees.

22. It is no gain saying that despite remaining in service for such a long stretch of time, the petitioners still suffer from the fear that they may lose their job if their service is found to be unsatisfactory in any manner. They have to remain far more diligent, attentive and

hardworking than the other regular employees. Even thereafter, they have to work with a paltry amount of consolidated pay.

23. To deal with such inconsistency in the service career of the daily wagers, the Ministry issued the Office Memorandum way back on 07th June, 1988 for immediate implementation. It appears that the directives mentioned in the said Office Memorandum have also not been adhered to by the respondent authorities. By not taking steps in compliance of the direction in the Office Memorandum, the respondents are acting contrary to the direction issued by the Ministry.

24. Submission of the respondents that the petitioners are working in unsanctioned post and, accordingly, they cannot be regularized also cannot be taken to be a valid stand for not regularizing the service of the petitioners.

25. In Jaggo (supra) the Hon'ble Supreme Court categorically laid down that the nature of the work performed rather than the label assigned to the worker, should determine the employment status and their corresponding rights and benefits. The Court highlighted the judiciary's role in rectifying misclassifications and to ensure that the workers receive fair treatment. The Court held that the government departments should lead by examples in providing fair and stable employment.

26. The Court was of the opinion that engaging workers on temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security and uphold the principle of justice and fairness. The Court directed regularization of service.

27. In Vinod Kumar (supra) the Hon'ble Supreme Court held that the essence of employment and the right thereof cannot be determined by the initial terms of appointment. The continuous service of the employees performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors regular recruitment, constitute a substantive departure from the temporary and scheme specific nature of their initial engagement. Reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. The Court directed regularization of the employees.

28. In Velajagan (supra), the Hon'ble Supreme Court reiterated the proposition laid down in Shripal (supra) that Umadevi (supra) cannot be used as a shield to justify exploitative engagement persisting for years

without the employer undertaking legitimate recruitment process to deny relief of regularization.

29. In Dharam Singh (supra), the Hon'ble Supreme Court observed that the practices of long term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. The observations in Shripal (supra) and Velajagan (supra) where reiterated once again. The Court directed regularization and creation of supernumerary posts along with pay protection. A compliance affidavit was directed to be filed by the respondents for ensuring compliance of the direction passed by the Court.

30. In Bhola Nath (supra), the Hon'ble Supreme Court directed regularization of the contractual employees. The Court concluded that the respondent-State is not justified in continuing contractual employees on sanctioned vacant posts for over a decade under the nomenclature of contractual engagements and thereafter denying them consideration for regularization. The Court held that contractual stipulation purporting to bar claims for regularization cannot override constitutional guarantees. Acceptance of contractual terms does not amount to waiver of fundamental rights and contractual stipulations cannot immunize arbitrary State action from constitutional scrutiny. The State, as a model employer, cannot rely on contractual labels or

mechanical application of Umadevi (supra) to justify prolonged ad-hocism or discard long serving employees in a manner inconsistent with fairness, dignity and constitutional governance.

31. In Mohammad Sagir (supra), the Hon'ble Supreme Court held that each case is to be decided on its own facts. In a case, where engagement is for a substantial length of time, a presumption arises that the work for which the workmen is engaged is of a perennial nature and there exists a vacant post. It is difficult to accept that workmen are engaged as substitutes for regular workers if they have worked for a long period of time.

32. In Sukhendu (supra) the Hon'ble Supreme Court, after noticing that the workers discharged their duties over a prolonged period of time, directed regularization even though they were not appointed against sanctioned posts and the decision in Umadevi (supra) prohibits such regularization. The Court was of the considered view that reliance on Umadevi (supra) for not regularizing the service of the workmen is misplaced.

33. In Sukhendu (supra) took note of the Full Bench decision of the Hon'ble Gauhati High Court in matter of ***Jitendra Kalita & others vs. State of Assam & others*** **reported in** ***2006 (2) GLT 654*** wherein the Court held that the solution to the issue of regularization must be undertaken by the State as a policy measure. Regularization, where

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permissible in law, is an executive function and its falls within the domain of policy and administration. Courts do not grant prior approval to executive decisions. It is not for the Court to authorize the executive to exercise powers already vested in it. The Court was pleased not to accept the sweeping proposition that no regularization can be made in respect of employees not appointed against duly sanctioned posts.

34. Umadevi (supra) requires the respondent authorities to consider the case of employees who have continued to work for ten years or more without intervention of judicial order for regularization. The authorities ought to formulate and devise a scheme according to which such employees may be regularized in service, however, in duly sanctioned posts.

35. As the petitioners are regularly working against non-sanctioned posts and the office of the learned District and Sessions Judge, Andaman and Nicobar Islands, Port Blair cannot function without them, the authorities ought to take a decision for creation of posts where they may be regularized. Till a decision is taken with regard to the prayer of the petitioners seeking regularization, the authority ought to implement the direction passed in the Office Memorandum dated 07th June, 1988.

36. Not considering the prayer of the petitioners seeking regularization allegedly on the ground of non availability of sanctioned posts and at the same time not granting benefits to the petitioners in

accordance with the Office Memorandum dated 07th June, 1988 acts as a double jeopardy to the petitioners. The petitioners are deprived in both ways; they are not being regularized in service and are also not getting the benefit of 1/30th of pay plus dearness allowances at the minimum of the relevant pay scale.

37. The respondents have not made out any case for not regularizing the service of the petitioners. It is also not the case of the respondents that the petitioners were appointed illegally. Merely by relying on technical issues like non availability of sanctioned posts and the clauses incorporated in the letter of appointment, the respondents are trying to stall the prayer of the petitioners for regularization.

38. The Court is of the considered opinion that the petitioners have made out a reasonably strong case for grant of relief in their favour.

39. In view of the above, it is hereby ordered that the respondent authorities ought to consider the prayer of the petitioners for regularization from their initial date of appointment along with all consequential benefits. A decision shall be taken by the competent authority within a period of twelve weeks from the date of communication of this judgment. A reasoned order shall be passed and communicated to the petitioners. If the prayer of the petitioners is allowed, then necessary follow-up action shall be taken by the authority without any further delay.

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40. Till a decision is taken by the authorities as regards regularization of service, the respondents shall take steps to implement the Office Memorandum dated 07th June, 1988 and pay the petitioners 1/30th of pay plus dearness allowances at the minimum of the relevant pay scale after ascertaining as to whether the nature of work and service rendered by the petitioners are same as that of the regular employees. If upon ascertainment by the competent authority, it is found that the nature of work entrusted to the petitioners is same as that of regular employees, then payment in terms of the aforesaid Office Memorandum shall be made without any further delay. A decision shall be taken in this matter within a period of twelve weeks from the date of communication of this judgment.

41. The writ petitions being WPA/484/2023 and WPA/485/2023 are disposed of. The connected applications are also disposed of accordingly.

42. There shall, however, be no order as to costs.

43. All parties are directed to act on a server copy of this judgment duly downloaded from the official website of this Court.

(AMRITA SINHA, J.)