

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 02.07.2025
Pronounced on: 11.07.2025

**SWP No.2510/2017
c/w
CPSW No.333/2018**

1. Syed Jameel Qaisar S/o Syed Qaisar Ali R/o Mustaffa Abad, HMT, Srinagar.
2. Showkat Ahmad Gujoo S/o Abdul Aziz Gujoo R/o Gowkadal, Srinagar.
3. Zeeshan Ahad S/o Abdul Ahad Bhat R/o Chandilora-Tangmarg District Baramulla.
4. Mohammad Ashraf Bhat S/o Ali Mohammad Bhat R/o Warapora, Tangmarg District Baramulla.
5. Mohammad Abbas Wani S/o Mohammad Yousuf Wani R/o: Chontipathri, Baba Reshi Tangmarg, District Baramulla.
6. Mohammad Saleem Ganie S/o Ghulam Mohammad Ganie R/o: Chandilora- Tangmarg District Baramulla.

...PETITIONER(S)

Through: - Mr. Shakir Haqani, Advocate.

Vs.

1. J&K State Cable Car Corporation Ltd. Srinagar, through its Managing Director.
2. Accounts Officer, J&K State Cable Car Corporation Ltd. Srinagar.
3. State of J&K through Commissioner/Secretary to Govt. Tourism Department, Civil Secretariat, Srinagar/Jammu.
4. Chairman, J&K State Cable Car Corporation Ltd. (Hon'ble Minister for Tourism), Civil Sectt. Jammu/Srinagar.

5. Vice Chairman, J&K State Cable
Car Corporation Ltd. J&K,
Srinagar/Jammu.

...RESPONDENT(S)

Through: - Mr. Furqan Yaqub Sofi, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

SWP No.2510/2017:

1) The writ petitioners have invoked the jurisdiction of this Court for seeking a direction upon the respondents to regularize their services from the date they have completed contractual period of service of two years. They have also sought release of arrears of their pay benefits in the regular pay scale along with allowances, with a further direction to notify their seniority with effect from the date of their regularization.

2) As per case of the petitioners, petitioner No.1 was appointed as Supervisor (E-governance), petitioner No.2 was appointed as Technician (E-governance) and petitioner No.3 was appointed as Technician (E-governance), in terms of order No.78 of 2012 dated 17.12.2012 on contractual basis against available vacancies in graded scales of pay after having undergone proper selection process pursuant to advertisement notice issued by the respondents. Similarly, petitioners No.4 to 6 are stated to have been

appointed as Junior Ski Patroller (Grade-II) against the available vacancies on contractual basis in graded scales of pay, in terms of order No.17 of 2013 dated 16.02.2013 after having undergone proper selection process pursuant to advertisement notice issued by the respondents. The contractual appointment of the petitioners was made for a period of two years and the same have been extended by the respondents from time to time till date.

3) According to the petitioners, after having completed the initial contractual period of two years to the satisfaction of the respondents, they have earned a right of being regularized in the respondent Corporation. It has been submitted that the services of similarly situated contractual appointees, who were appointed by virtue of order No.12 of 2011 dated 12.05.2011, have been regularized after having completed contractual period of two years in terms of order No.102 of 2013 dated 18.12.2013. The regularization of services of the said contractual engagees has been approved by the Board of Directors of the respondent Corporation vide Agenda Item No.31.23 in 31st meeting of Board of Directors held on 28.02.2014.

4) It has been submitted by the petitioners that they have been agitating their grievance with the respondents and have even approached His Excellency the Governor by

making detailed representations seeking regularization of their services but without any success.

5) It has been contended that the failure of respondents to regularize services of the petitioners is arbitrary, unjust and unfair. It has been further contended that the respondents, by delaying regularization of services of the petitioners while granting relief of regularization of services to similarly situated contractual employees, have violated the constitutional right of the petitioners guaranteed under Article 14 and 16 of the Constitution.

6) The respondents have contested the writ petition by filing reply thereto. In the reply, it has been submitted that the petitioners have no right to claim regularization of their services against the posts on which they have been appointed on contractual basis. It has been submitted that the term of the petitioners has been extended from time to time and that they are still continuing on the posts on which they were appointed but they do not have any right to seek regularization in absence of any enabling provision or policy providing for such regularization. The respondents have admitted the fact that services of some of the employees engaged on contractual basis, after completion of their tenure as contractual employees, have been

regularized but according to the respondents, the same is a past act and a closed event.

7) It has been contended that the petitioners have no vested right of regularization of their services merely because they have completed the tenure of contractual appointment satisfactorily as the respondent Corporation has not adopted any policy relating to regularization of contractual employees. It has also been contended that the matter regarding regularization of services of the petitioners was taken up with the Administrative Department but because the petitioners had not completed seven years of continuous service, which is one of the pre-requisites for regularization of contractual employees under the J&K Civil Services (Special Provisions) Act, 2010, therefore, their cases could not be considered.

8) The respondents have further submitted that three posts of Technicians (E-governance) and one post of Supervisor (E-governance) were created for the first time by diversion of then existing posts of Technicians and Supervisor (Electrical) by Board of Directors in its 30th meeting held on 06.08.2012 whereas six posts of Junior Ski Patroller were also created in the same meeting. It has been submitted that after creation of these posts, the process was initiated for filling up of these posts by issuing

advertisement notices on contractual basis. Pursuant to the said advertisement notices, the petitioners came to be appointed against these posts on contractual basis.

9) During pendency of the writ petition, an interim order came to be passed by this Court on 03.02.2023, whereby a direction was issued to the respondents to prepare and submit the agenda with regard to regularization of services of the petitioners on the touchstone of the same policy which had been adopted by the respondent Corporation in respect of similarly situated contractual employees. It was further directed that after the approval of the Administrative Department, proposal for regularization of contractual services of the petitioners be placed before the Governing Body for final decision and the same be placed before the Court.

10) It seems that pursuant to the aforesaid interim direction passed by this Court, the matter was placed by the respondents before the Board of Directors in its 33rd meeting held on 19.06.2023 and the Board of Directors decided that the respondent Corporation would contest the case before the Court. It also appears that the respondent Corporation issued an order bearing No.24 of 2024 dated 19.12.2024, whereby, after considering claim of the

petitioners for regularization of their services, the same has been rejected on the ground that the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 stands repealed.

11) I have heard learned counsel for the parties and perused the pleadings and the documents on record. I have also gone through the record produced by the respondents relating to regularization of similarly situated contractual employees.

12) So far as the crucial facts, which relate to the present case, are concerned, the same are not in dispute. Petitioners No.1 to 3 have been appointed on contractual basis for a period of two years in terms of order dated 17.12.2012 after undergoing the selection process pursuant to advertisement notice No.02 of 2011 dated 25.11.2011 read with advertisement notice No.01 of 2012 dated 18.10.2012. Similarly, petitioners No.4 to 6 have been appointed on contractual basis in terms of order dated 16.02.2013 after undergoing selection process pursuant to advertisement notice No.02 of 2012 dated 24.11.2012 read with advertisement notice No.01 of 2013 dated 07.01.2013. Thus, appointment of the petitioners on contractual basis against available vacancies pursuant to a regular selection process is not in dispute. It is also not in dispute that

services of four more employees, namely, Mudasir Nabi Mattoo, Idris Zahoor, Irfanul Haq Nazki and Irfan Ahmad Bhat, who were appointed on contractual basis in terms of order No.12 of 2011 dated 12.05.2011 after undergoing selection process pursuant to advertisement notice No.01 of 2011 dated 25.01.2011, have been regularized in terms of order No.102 of 2013 dated 18.12.2013 issued by the respondent Corporation pursuant to the approval of the Board of Directors accorded in its meeting held on 28.02.2014. The respondents have also admitted that the petitioners right from their engagement as contractual employees in the years 2012 and 2013 till date are continuing to perform their functions and duties to the entire satisfaction of the employer, meaning thereby that as on date, the petitioners have put in more than ten years of service with the respondents against available vacancies. It is not the case of the respondents that services of the petitioners are not required by them.

13) In the face of aforesaid admitted facts, the question that is required to be determined is as to whether the stand of the respondents in denying regularization of services of the petitioners on the ground that there is no legal framework or policy in place to regularize services of

contractual employees of the respondent Corporation, is legally tenable.

14) In the above context, learned counsel for the petitioners has contended that the petitioners have a legitimate expectation that like their colleagues, who had been earlier regularized in terms of the decision of the Board of Directors of the respondent Corporation, they would be regularized after successful completion of their contractual period. To support his contention, the learned counsel has placed reliance upon the judgment of a Coordinate Bench of this Court in the case of **Raheela Nazir and Ors. Vs. J&K EDI and others** (WP(C) No.988 of 2021 dated 27.10.2022).

15) In the aforesaid case, a Coordinate Bench of this Court has, in somewhat similar circumstances, after analyzing the legal position pertaining to doctrine of 'legitimate expectation', held that the petitioners in that case had a legitimate expectation that they would be treated in the same manner in which similarly situated employees, who were engaged earlier, were treated by the respondents in the said case. While holding so, the Coordinate Bench of this Court relied upon the following observations of the Supreme Court in **Food Corporation of India v. Kamdhenu Cattle Feed Industries**, (1993) 1 SCC 71:

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non- arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The

*doctrine of legitimate expectation gets assimilated
in the rule of law and operates in our legal system
in this manner and to this extent.”*

16) From the aforesaid analysis of the legal position, it is clear that ‘legitimate expectation’ of a citizen may not, by itself, be an enforceable right but failure to consider and give due weight to it renders the decision of a public authority arbitrary as due consideration of a legitimate expectation forms part of the principle of non-arbitrariness which is a necessary concomitant of the rule of law,

17) Coming to the facts of the present case, as discussed hereinbefore, the cases of the petitioners and the cases of those contractual appointees who were appointed pursuant to order No.12 of 2011 dated 12.05.2011, are identical in every aspect of the matter. If we have a look at the appointment orders of the petitioners and the appointment order dated 12.05.2011, the terms and conditions laid down therein are exactly identical to each other. The respondent Corporation has vide its order dated 18.12.2013 regularized services of those employees who were appointed in terms of order dated 12.05.2011 after they completed their two years of contractual engagement and the said action of the respondent Corporation has been confirmed by its Board of Directors in its 31st meeting held on 28.02.2014. The respondents have been unable to carve out any distinction

and difference between the cases of the petitioners and the cases of those contractual appointees whose services were regularized in terms of order dated 18.12.2013. Since the cases of the petitioners are identical to the cases of beneficiaries of order dated 12.05.2011, therefore a legitimate expectation had arisen in favour of the petitioners that their cases would be treated in similar manner. The respondent Corporation by declining to extend the similar benefit to the petitioners without there being any distinction in the two cases have acted in an arbitrary and discriminatory manner. Thus, the action of the respondents in denying the benefit of regularization in favour of the petitioners cannot be sustained in law.

18) There is yet another aspect of the matter which is required to be noticed. The petitioners, as already stated, have been working on contractual basis for more than ten years now. They have been appointed on clear vacancies after undergoing proper selection process and they are not the back door appointees. It is not the case of the respondents that the services of the petitioners are not required by them. It is also an admitted position that the term of engagement of the petitioners is being continued by the respondents from time to time without there being any interim order in favour of the petitioners to that effect.

19) A Constitution Bench of the Supreme Court has, in the case of **Secretary, State of Karnataka and others vs. Uma Devi and others**, (2006) 4 SCC 1, made a distinction between ‘irregular’ and ‘illegal’ appointments and has emphasized the importance of considering certain appointments even if the same were not made strictly in accordance with the prescribed rules and procedures, by observing that the same cannot be said to have been made illegally. Para (53) of the said judgment is relevant to the context and the same is reproduced as under:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not

be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

20) From the aforesaid dictum of law laid down by the Supreme Court, it is clear that services of irregularly appointed persons who have worked for ten years or more in duly sanctioned posts but not under the cover of orders of the courts or tribunals are required to be regularized.

21) The issue with regard to regularization of temporary employees has recently been deliberated upon by the Supreme court in the case of **Vinod Kumar and others etc. vs. Union of India and others**, (2024) 9 SCC 324. The Court, after taking notice of the aforesaid observations made by it in **Uma Devi's** case (supra), observed that reliance on procedural formalities cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service

22) Again, in **Jaggo v. Union of India and others**, 2024 SCC OnLine SC 3826, the Supreme Court explained the ratio laid down by it in **Uma Devi's** case (supra) in the following manner:

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

that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in **Vinod Kumar v. Union of India**, it was held that held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed “temporary” but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

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

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

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment : continuous, long-term service, indispensable duties, and absence

of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

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.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.

24. The landmark judgment of the United State in the case of **Vizcaino v. Microsoft Corporation** serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine

employment status and the corresponding rights and benefits. It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.

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 labeled 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.

26. *While the judgment in **Uma Devi** (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in **Uma Devi** (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.*

27. *In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.*

23) In the face of aforesaid legal position, it is clear that the contention of the respondents that just because the petitioners have continued to serve for the last more than a

decade they cannot claim regularization of their services in view of the terms and conditions of their engagement, is without any substance. Merely because there is no policy of regularization of services of the contractual employees framed by the respondent Corporation or because the provisions of the J&K Civil Services (Special Provisions) Act, 2010, stand repealed, the petitioners cannot be denied the benefit of regularization of their services after having served for more than ten years with the respondent Corporation to the entire satisfaction of the employer given the fact that they have been appointed against vacant posts after undergoing a proper selection process.

24) In view of the foregoing discussion, even by virtue of the ratio laid down by the Supreme Court in **Uma Dev's** case (supra), as explained in **Vinod Kumar** and **Jaggo's** cases (supra), the petitioners have a vested right of regularization of their service after having put in more than ten years of service on contractual basis. Denying such relief to the petitioners would be contrary to the principles of justice and fairness and it would also amount to hostile discrimination against the petitioners vis-à-vis similarly situated employees who have already been extended the benefit of regularization of services.

25) For the foregoing reasons, the writ petition is allowed and the respondents are directed to regularize services of the petitioners on the posts on which they are working, from the date of completion of ten years of contractual service with all consequential benefits including the arrears of salary. The needful shall be done by the respondents within a period of three months from the date a copy of this judgment is served upon them.

26) The record be returned to learned counsel for the petitioners.

CPSW No.333/2018:

In view of the decision in the main writ petition, the order out of which instant contempt petition has arisen, has merged with the final judgment. Therefore, nothing further survives for consideration in this contempt petition. The same is, accordingly, disposed of.

(Sanjay Dhar)
Judge

Srinagar,
11.07.2025
"Bhat Altaf" Secretary

Whether the **Judgment** is reportable: YES/NO