

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8108 of 2024

1. Ranjeet Kumar, S/o late Awadhesh Prasad Singh R/o House No.57, Road No.10, Indrapuri, P.O.- Keshri Nagar, P.S.- Patliputra, District- Patna-800024.
2. Sunny Katyayan, S/o late Surya Kishor Khan, R/o Plot No.D-42, Flat No.302, 2nd Floor, Gali No.17, Hindon Vihar, Barola, Noida, Gautam Buddha Nagar, Uttar Pradesh-201301.
3. Rajeev Kumar, S/o Sri Dinesh Kumar Verma, R/o E-84, Bhagirathi Vihar, P.O. and P.S.- Gokal Puri, North East Delhi-110094.
4. Mohd. Rashid @ Mohammad Rashid, Son of Vaseem Ahmad, R/o Village and P.O. Sehuwadeeh, P.S.- Baharia, Tehsil- Phoolpur, District- Allahabad (Prayagraj), Uttar Pradesh-212402
5. Gautam Mohan Shukla, S/o Bipin Mohan Shukla, R/o Bina Niwas, Village-Manjhiladih, P.O. and P.S.-Tundi, District- Dhanbad, Jharkhand-828142.

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Secretary, Finance Department, Government of Bihar, Patna.
3. The Hon'ble Patna High Court, Patna through its Registrar General.
4. The Registrar General, Patna High Court, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Binod Kumar Singh, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate
For the State	:	Ms. Binita Singh, S.C.-28
For the High Court	:	Mr. Piyush Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V JUDGMENT
Date : 09-01-2026

This writ petition is filed invoking the writ jurisdiction of this Court under Article 226 of the Constitution *inter alia* praying for absorbing/regularizing the petitioners against the vacant permanent substantive posts of Personal Assistants (hereinafter to be referred as “P.A.”) in the



establishment of this Court, who have been continuing on contract basis since their initial engagement from March-April, 2018, and to grant them all consequential benefits including regular pay scale and admissible allowances upon regularization of their services with effect from 31.10.2018.

2. The brief factual matrix relevant for the present purpose is that, the Patna High Court had published an advertisement on 23.03.2017 on its website inviting eligible candidates for direct recruitment to 100 vacant posts of P.A. under the ministerial establishment of this Court in the pay scale of Rs.9300-34800/- (Grade Pay of Rs. 4600) and usual allowances as admissible under the Rules. Responding to the aforesaid advertisement, the petitioners had applied within the stipulated time. Pursuant to the aforesaid recruitment process, the Online Test for recruitment to the post of P.A.-2017 was conducted on 10.12.2017. On 31.03.2018, it was notified *vide* notice issued by the Registrar General of this Court (Annexure P/3), that none of the appearing candidates including the present petitioners, met the minimum qualifying standard mentioned in Clause-5 of the Advertisement No. P.A./01/2017 and consequently none had qualified. In other words, all the candidates including the present petitioners stood unsuccessful.



3. *Vide* the same notice dated 31.03.2018, it was notified that owing to pressing need of manpower due to acute shortage of P.As. and in order to meet the requirement and exigencies of this Court, it was decided to engage top 100 candidates, from amongst the non-qualified candidates, purely on contractual basis for a period of six months on a consolidated pay of Rs.30,000/- only per month subject to the terms and conditions mentioned in their engagement letters, which was issued individually to each of the aforesaid candidates. Keeping in view the reservation policy and roster, as adopted by this Court, wherein only 75 candidates could be engaged since 25 candidates belonging to EBC, SC, ST and DQ category candidates could not make it within the said top 100 “unsuccessful” candidates. Consequently, the present petitioners along with other candidates were engaged on contract basis and individual engagement letters were issued. The engagement was subject to the condition that the candidates must clear the minimum qualifying standards as prescribed in the advertisement on completion of six months period of their service and those candidates who cleared the test would be considered for appointment on the substantive post of P.A. on probation.



4. The aforesaid engagement letters (Annexure P/4 series) issued to the candidates including the petitioners reads as under:-

*“With reference to your application for the post of Personal Assistant in pursuance of the Advertisement No. P.A/01/2017 dated 23rd March, 2017 and the computer based exam held on 10th December, 2017, it is informed that none of the candidates including you, who appeared at the aforesaid examination, has cleared the prescribed minimum qualifying standards required for selection/appointment on the post of **Personal Assistant** in terms of the Advertisement.*

*However, in order to meet the requirement and exigencies of the Court, you are hereby engaged on the post of **Personal Assistant purely on contract basis for a period of six months** on the basis of your performance in the said examination.*

Your engagement is subject to the following terms and conditions:-

- 1. **This engagement is purely contractual and is made for a period of six months from the date you report for the duty. It would give no right to the persons to claim permanent appointment on any posts in the High Court.***
- 2. You will report for duty within 15 days from the date of receipt of this letter of Engagement. In case you fail to report*



for duty within 15 days, this order will stand withdrawn.

3. *You will be entitled to a consolidated monthly pay of Rs.30,000/-. You will not be entitled to any other pay or allowance/s.*
4. ***This is not a regular appointment in the High Court. You will not be allowed any perquisites or facilities available to a regular or a permanent employee of the High Court.***
5. ***Your regular appointment is subject to condition that you must clear minimum prescribed qualifying standard of the Court in English Shorthand-Typing test and English Typing test to be conducted on completion of six months of Contractual Service.***
6. ***After clearing the said tests, you may be considered for appointment to the substantive post of Personal Assistant on probation by putting you on regular pay scale of the post plus usual allowances as admissible under the Rules.***
7. ***This engagement may be terminated without assigning any reason at any time during the subsistence of the service contract.***
8. *You will be entitled to paid leave on all public holidays. In addition to the public holidays, you will be allowed four paid casual leave for every quarter of a year*



commencing from 1st of January of the year. Casual leave not availed of, in any quarter, may be carried forward to the next quarter but not further. You will not be allowed more than four days casual leave at a time.

Xxx”

5. Pursuant thereof, altogether 42 out of 75 candidates, including the present petitioners, finally joined the post of P.A. on the above terms and conditions. The Registrar General-respondent no.04 *vide* his Office Order dated 10.10.2018 (Annexure P/5) extended the period of engagement for 45 days on the same terms and conditions, on which the candidates including the petitioners were engaged and it was further stated that the qualifying examination as contemplated in clauses (5) and (6) of the engagement letters shall be conducted and the date thereof would be notified in due course. On 30.10.2018 (Annexure P/6 series), the date of the aforesaid examination, which was meant for regular appointment for the 42 P.As, serving on contract basis at that time, was notified as 04.11.2018 by the respondent no.04-Registrar General. The aforesaid notice reads as under:-

“It is notified that qualifying examination/test of English Shorthand Typing and English Typing test for regular appointment of 42 Personal Assistants engaged on contract



basis for a period of six months, is going to be held on 4th November, 2018, as per notice containing schedule, scheme & venue attached herewith.

A list of all the 42 Personal Assistants engaged on contract basis bearing their name, father's name, registration number & roll number is also attached herewith for information and needful.

They are hereby directed to appear at the aforesaid qualifying examination/ test at the venue mentioned in the notice, as per the schedule; failing which request for re-test, in no case, shall be entertained in future.

xxxxx

Dated – 30th October, 2018

Registrar General”

6. Further, by an even dated notice, it was also notified that the aforesaid examination which was scheduled for 04.11.2018 would to be conducted by the same agency that had conducted the initial recruitment examination i.e. TCS in the following manner:-

- i. Test-I : English Shorthand Dictation and Typing Test (28 minutes)
- ii. Test-II : English Typing Test (10 minutes)

7. On 23.11.2018, the Competent Authority had directed to place the results of the aforesaid examination in a sealed cover and further that the engagement of the aforesaid



contractual employees i.e. the 41 P.A.s, at the time, was extended by one month. After completion of the aforesaid test, it was notified *vide* notice dated 05.12.2018 (Annexure P/7), that none of the 41 P.As who were engaged and serving at the time on contract and had appeared for the test on 04.11.2018 have qualified the aforesaid qualifying test. Accordingly, a fresh examination of English Shorthand Typing Test for the 41 candidates was conducted in the Court premises on 16.12.2018. The criterion for the examination scheduled for 16.12.2018 also stood changed and the candidates were further informed that the passage for the aforesaid test shall be approximately of 1000 words and the speed of stenography expected from them was 80 words per minute (wpm) and accordingly the dictated passage was to be typed out within the prescribed limit of time which was 50 minutes. *Vide* another notice, which was again in continuation of the earlier notice dated 05.12.2018, it was informed to the 41 candidates that an English Typing Test of 400 words @ 40 wpm would also be conducted immediately after the examination of the English Shorthand typing test on the same date i.e., 16.12.2018.

8. After the examination on 16.12.2018 was concluded, it was notified *vide* Office Order No.01, dated



11.01.2019 (Annexure P/9) by the respondent no.4-Registrar General that based on the performance in the aforesaid examination of English shorthand typing test and the English typing test held on 16.12.2018, altogether 35 out of the 41 candidates were continued on contractual basis on the same terms and conditions on which their earlier engagements were made, till regular selections are held as per the Rules after fresh advertisement. The remaining six candidates who could not achieve the minimum standard in the aforesaid examination, their services stood terminated vide Office Order No. 02 of even date (Annexure P/10). Out of the 35 selected persons who were to continue as contractual engagement after qualifying the examination held on 16.12.2018, only, 08 candidates, including the present petitioners remained. Subsequently, even out of the aforesaid 08 candidates, 03 candidates resigned and only five candidates remained. These five candidates are before this Court in the present writ petition.

Submissions of the petitioners:-

9. It has been submitted by the learned counsel for the petitioners that immediately after qualifying the examination held on 16.12.2018, the petitioners preferred several representations through the respondent-Registrar



General for appointing them on the substantive post of P.A. in view of clause (5) read with clause (6) of their engagement letters but in all occasions the respondents have not considered their prayer and *vide* different office orders the services of the petitioners was extended periodically and the terms of their original engagement sustained. Subsequently, on a representation dated 09.08.2021, made by the petitioners and other candidates engaged contractually, the tenure of their contract was further extended till conclusion of the then upcoming direct recruitment on the same terms and condition as originally engaged on the post of P.A. *vide* Office Order dated 05.09.2021 (Annexure P/17). It is emphasized by the learned counsel for the petitioners that the petitioners had drawn strength from the clauses (5) and (6) of their engagement letters to contend that their services merits regularization upon having qualified the examination.

10. Adverting to the clauses (5) and (6) of the engagement letters, the learned counsel for the petitioners has submitted that a bare perusal of the aforesaid clause would show that the appointments of the petitioners were made subject to the condition that they must clear the minimum prescribed qualification upon completion of the six months of contractual



service, and after successfully qualifying the aforesaid test, the case of the petitioners would be considered for regular substantive permanent post of P.A. on probation by putting them on regular pay scale and admissible allowances. The examination which took place on 16.12.2018 was in pursuance of the said stipulation under clauses (5) and (6) of the engagement letters, and the petitioners having successfully qualified by meeting the minimum statutory standard therein have crystallized their right to be considered towards regularization.

11. It has been categorically submitted that the petitioners were selected, not randomly, rather pursuant to the open examination based on their performance therein in order of merit, and the stipulation as contained under clauses (5) and (6) of their engagement letters clearly provided that upon successfully qualifying the examination, the services would be regularized. Thus, it is argued that the petitioners were not selected as a 'back-door' entrant and it would be manifestly arbitrary for the respondents to not regularize the services of the petitioners against the substantive regular posts despite fulfilling the conditions pursuant to clauses (5) and (6) of their engagement letters and pertinently after having successfully



qualifying the examination conducted on 16.12.2018.

12. It has further been submitted that the petitioners who are discharging the same duties as their counterparts, who have been appointed on a regular post, are yet being deprived of their rightful regularization. The learned counsel for the petitioners has drawn strength from the decision of the Hon'ble Supreme Court rendered in the case of ***Jaggo vs. Union of India & Ors.*** reported as ***2024 SCC OnLine SC 3826***, particularly paragraph-10 wherein the Hon'ble Supreme Court had held that long and uninterrupted service cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of the employment must be considered in the light of their sustained contribution, the integral nature of the work and the fact that no evidence suggests that their entry was illegal or surreptitious. On the strength of the aforesaid decision rendered in the case of ***Jaggo (supra)***, the learned counsel for the petitioners has argued that the case of the present petitioners squarely justifies regularization since, *firstly*, the nature of work dispensed by the petitioners are perennial and fundamental to the working of the High Court. The recurring nature of these duties necessitates their regularization on regular substantive post, irrespective of



how their initial engagements were labelled. *Secondly*, the work of the instant petitioners is not only essential but also indistinguishable from those regular appointees who are working as regular P.A.s in this Court. *Thirdly*, the petitioners are not back-door entrants since their engagement letters itself provisioned for a path towards regularization upon qualifying the examination as per clauses (5) and (6) of their engagement letters and after successfully qualifying the examination conducted by the respondent authorities on 16.12.2018, the petitioners have a crystallized lawful claim for regularization of their services. It is also argued by the learned counsel for the petitioners that the denial of the regularization by the respondent authorities is a glaring case of misuse of label of '*engagement on contract basis*' and denial of basic rights and benefits of the petitioners.

13. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in a case of *Vinod Kumar & Ors. vs. Union of India & Ors*, reported in (2024) 9 SCC 327, wherein the Hon'ble Court in Para-5 had held that the essence of employment and the rights thereof cannot be merely determined by initial terms of appointment when the actual course of employment has evolved



significantly over time. The continuous services of the petitioners performing duties indistinguishable from those on permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Further, advertent to paragraph-8 of the aforesaid judgment, the learned counsel for the petitioners has argued that in the present case, the service conditions, as evolved over a long period of time, warrants a reclassification from temporary to regular status. The failure to recognize the substantive nature of their role and their continuous service akin to the permanent employees runs counter to the principles of equity, fairness and intent behind employment regulations.

14. The learned counsel has placed reliance on a recent decision of the Hon'ble Supreme Court in the case of *Dharam Singh & Ors. vs State of U.P. & Anr.* reported as **2025 (4) PLJR (SC) 152 = 2025 SCC OnLine SC 1735.**

15. Lastly, the learned counsel appearing for the present petitioners submits that the petitioners have now reached the upper age limit and therefore they could not appear for any public employment and further the petitioners have been serving this Court, since April, 2018, i.e., for about eight years now and



therefore it is argued that even on a sympathetic consideration the petitioners deserve regularization of their services.

Submissions of the respondent nos. 3 and 4

16. *Per contra*, the learned counsel for the respondent nos.3 and 4 has submitted at the outset that the present writ petition is not maintainable on three counts.

17. *Firstly*, the petitioners were contractually engaged and on the strength of clauses (5) and (6) of their engagement letters are seeking regularization against regular substantive posts of P.As. which is not maintainable since admittedly the aforesaid engagement letters were ‘contracts of personal service’ entered into between the petitioners and the Patna High Court and the terms of such contracts in the nature of ‘personal service’ are not enforceable by way of writ jurisdiction except on a limited scope, particularly in three circumstances (i) dismissal in violation of Article 311 of the Constitution of India; (ii) reinstatement of dismissed worker under industrial law by labour / industrial tribunal; and (iii) statutory body acting in breach of mandatory obligation imposed by statute. The learned counsel for the respondent nos. 3 and 4 has submitted that none of the three scenarios are attracted in the facts of the present case and consequently the instant writ is not



maintainable as the petitioners can not seek enforcement of clauses (5) and (6) governing their contract which is a 'contract of personal service' as contained in their engagement letters dated 21.03.2018 by way of invoking writ jurisdiction. The learned counsel in support of his contention has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Bank of Baroda Limited vs. Jeewan Lal Mehrotra*** reported as ***(1970) 3 SCC 677*** wherein the Hon'ble Supreme Court had held as under:-

“3. The main point that has been urged on behalf of the appellant is that the present case was one of termination of service after giving of three months' notice and the ordinary law of master and servant applied. Although in case of illegal termination or dismissal the respondent could have claimed damages but he could not ask for or be granted a declaration that he should be treated as if he was still in service. The law as settled by this court is that no declaration to enforce a contract of personal service will be normally granted. The well-recognised exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Article 311, (2) where reinstatement is sought of a dismissed worker under the industrial law by labour or industrial tribunals, (3) where a statutory body has acted in breach of a mandatory obligation imposed by



statute vide U.P. Warehousing Corpn. Ltd. v. Chandra Kiran Tyagi [(1969) 2 SCC 838. The case of the respondent did not come under any of the above exceptions. Therefore, in granting a declaration of the nature sought by the respondent the courts acted contrary to law and that part of the decree could not be upheld. On behalf of the appellant, the reversal of the decree for Rs 1650 has not been pressed.”

18. *Secondly*, the present writ petition is also grossly barred by limitation and suffers from delay, laches and acquiescence on the part of the petitioners, since according to the admitted position of the petitioners they should have been absorbed/regularized into regular substantive posts upon qualifying the two tests conducted on 16.12.2018 in terms of clauses (5) and (6) of their engagement letters, however they were not taken into the fold of the High Court against regular substantive posts vide order dated 09.01.2019 (Annexure P/9) and rather their contractual engagement was continued and extended till regular appointments under fresh advertisement. Therefore, the learned counsel for the respondent nos. 3 and 4 has argued that the cause of action arose on 16.12.2018 when the petitioners stood qualified in the test, however the petitioners have chosen to file the present writ petition only on 09.05.2024 after a lapse of more than five years. Adverting to Article 137 of



the Limitation Act 1963, the learned counsel has submitted that the present writ is grossly barred by limitation since merely filing repeated representations after the year 2019 and its rejection by the Competent Authority does not *ipso facto* extend the cause of action which squarely arose on 16.12.2018 itself. To fortify his argument, the learned counsel has placed reliance on *State of M.P. & Anr. vs. Bhailal Bhai* reported as *1964 SCC OnLine SC 10 = AIR 1964 SC 1006* and more recently in the case of *State of Orissa vs. Bhagaban Mohanty (D) thr LRs* passed in *Civil Appeal No. 3525 of 2025 arising out of S.L.P (C) No. 26965 of 2019*. The learned counsel for the respondent nos. 3 and 4 has further argued that the right of the petitioners to claim regular appointment as per clauses (5) and (6) of engagement letters on passing of the above two tests on 16.12.2018 was denied to them on 09.01.2019 by issuance of office order No. 01 (Annexure P/9) as it was directed that they will continue on contract only till regular selection is made as per Rules after fresh advertisement. Therefore, it is argued that it is an admitted case that the petitioners did not challenge this denial of regular appointment and change of term and condition of their contractual engagement before any Court of Law and continued to work on contractual basis thus, they accepted the



said change, i.e. acquiesced to the same, way back in the year 2019 itself. Accordingly, the petitioners now cannot turn around and claim appointment / absorption on regular basis when till date they have not challenged either the said decision of denial of regular appointment notified on 09.01.2019 or the said change of terms and conditions on their engagement on contract which admittedly is binding on them and therefore, on this score also, it is argued that the present writ stands not maintainable having been hit by delay laches and acquiescence.

19. *Thirdly*, the learned counsel has submitted that the present writ is also not maintainable on grounds of suppression of material facts and insinuation, inasmuch as, the petitioners have deliberately suppressed the fact that on 23.08.2023, the Patna High Court had issued fresh advertisement for direct recruitment to 36 posts of P.As. and all the five instant petitioners had duly applied therein however, the petitioner nos. 1, 2, 4 and 5 did not even qualify the preliminary test and the petitioner no.3 failed to qualify the written test as they stood below the cut-off marks of their respective categories. Subsequently, the petitioner nos. 1, 2, 4 and 5 had submitted a representation dated 27.02.2024 seeking to allow them to directly appear in the written test despite not qualifying



the preliminary test, which was rejected and communicated to petitioner no.1 vide memo no. 25004 dated 29.03.2024 with a request to inform the others. On 08.05.2024 the final result was declared for the P.A. Exam-2023 and immediately thereafter the petitioners preferred the present petition without adverting to and deliberately suppressing the above material facts. It is therefore argued that the petitioners had deliberately suppressed the facts keeping in view their contractual engagement was meant only till fresh appointments were made under P.A. Exam-2023 which is not in dispute and therefore, the suppression of the material fact renders the instant petition as not maintainable.

20. Now, adverting to the counter affidavit, the answering respondent no.4 has brought the bare facts of the case to the foreground and submitted that the advertisement (employment notice) bearing Adv. No. P.A./01/2017 was issued on 23.03.2017 for the direct recruitment to 100 vacant posts of P.A, under the ministerial establishment by the Patna High Court on the terms and conditions mentioned therein as per applicable Rules being the Patna High Court Officers and Staff (Condition of Service) Rules, 1997 as amended from time to time. The candidates including the petitioners appeared and as per the results of the written (online) test which was held on



10.12.2017, none of the appearing candidates, including the present petitioners, obtained the minimum qualifying marks/standard in the four tests. It is further submitted that even as per the proviso to clause-5 of the advertisement, which provisioned for a relaxation of 10%, however still, none of the candidates could qualify even the relaxed standards in the four tests. It is, therefore, the contention that the candidates not only could not qualify the minimum standard, but also could not meet the further relaxed minimum standard and were therefore unsuccessful. Accordingly, being unqualified in both the standards, i.e. minimum standard and the relaxed standard, the candidates were not called in for the subsequent second recruitment stage, which was the interview stage. However, the unsuccessful candidates were engaged purely on contractual basis to meet the urgent need and exigency of the Court vide notice dated 31.03.2018 and individual letters of engagement were accordingly issued on 31.03.2018. It is however stressed, by the answering respondent no.4, that since the none of the candidates had qualified, no interview stage took place and as a result, the recruitment was never complete and no right for absorption/regularization could flow from an incomplete recruitment process.



21. It is further submitted by the answering respondent no.4 that owing to the pressing exigency, either manpower could have been outsourced from open market or alternatively could have been met by way of purely contractual engagements, for a limited short period of time, from amongst the top 100 non-qualified candidates of P.A. Examination, 2017. The Patna High Court had decided in favour of the latter which was approved by the Establishment Committee of this Court and the Competent Authority, accordingly, decided to engage, top 100 non-qualified candidates in order of merit, purely on contractual basis. Since none of the candidates belonging to EBC, SC, ST and DQ category could make into top 100 non-qualified candidates, only 75 candidates were offered engagement subject to the condition, as stipulated in clause (5) and (6), that they must clear the minimum qualifying standards which was to be conducted upon completion of the said period and those who cleared may be considered for appointment on the substantive regular posts of P.A. on probation. Altogether 42 out of the 75 candidates, including the petitioners, joined the service between 09.04.2018 and 14.06.2018.

22. The answering respondent no.4 had next submitted that after the completion of the examination which



was held on 04.11.2018 by the same agency, i.e., TCS, the result was placed before the Competent Authority who *vide* minutes dated 28.11.2019 had noted that according to the norms prescribed under the 1997 Rules, none of the candidates were able to qualify the test conducted by TCS and had further directed that a fresh examination be conducted on 16.12.2018. Paragraph nos. 9 and 10 of the counter affidavit filed by the answering respondent no.4 is extracted herein below:-

“9. That after the above two tests were held on 16.12.2018 in which the said 41 contractual employees appeared, computerized and manual evaluation was carried out and result in sealed cover was placed before the Hon'ble Competent Authority who after opening and perusing it was pleased to note that as per the norms fixed (I.e. minimum percentage of accuracy in English Shorthand typing test being 90% and that of English Typing test being 95%) out of the said 41 contractual employees 35, including the petitioners, were reported to be successful and a total of 6 could not achieve either or both these minimum qualifying standards. The Hon'ble Competent Authority after perusing the entire concerned file and taking into consideration the entire facts starting from initiation of the process for recruitment to the above said 100 posts of personal assistants was pleased to record his minutes dated 9.1.2019 holding, amongst others, as follows:-



"..... Having considered the same since the above contractual appointees were taken into the fold of the High Court on account of the exigencies of requirement of Personal Assistants and were engaged on contractual basis, the issue of regularization as proposed earlier would not be in consonance with the Rules, inasmuch as there is no such provision for regularization of services of such candidates who had been appointed on contractual basis after having been unsuccessful in the examinations conducted pursuant to the advertisement. Even otherwise most of the candidates could succeed only after manual evaluation was carried out. Consequently, in the absence of any Rules relating to regularization of any regular appointment by such mode, the above successful candidates cannot be offered regular appointment on a substantive basis. However, in view of the exigencies of the High Court which will continue to prevail and the requirement of Personal Assistants may be necessary with any future elevations of Hon'ble Judges, I find it expedient to retain the above thirty five candidates mentioned hereinabove who will continue on contractual basis on the same terms and conditions till regular selections are held



as per the Rules after fresh advertisement. The services of the six unsuccessful candidates mentioned hereinabove shall stand terminated. Steps be immediately taken for regular recruitment of Personal Assistants with a wide Advertisement so as to attract the maximum number of applicants. The existing regular vacancies be calculated and advertisements be issued preferably within two weeks from today to go ahead with the regular recruitment process as per Rules.....”

10. *That in compliance of the above decisions office order No. 01(Appt.) dated 9.1.2019 (Annexure-P/19 to writ petition) was issued by the Patna High Court by which on the basis of their performance in the tests held on 16.12.2018 the 35 contractual employees, including the petitioners, were continued on contract basis on the same terms and conditions as their initial engagement till regular selection was held as per Rules after fresh advertisement and office order No. 02 (Appt.) dated 9.1.2019 (Annexure-P/10 to writ petition) was issued terminating services of six contractual employees as they did not achieve the minimum qualifying standard required in the above tests held on 16.12.2018.”*

23. It is next submitted that the Patna High Court initiated the process of regular direct recruitment for the post



and altogether 12 candidates were declared successful and out of which, only 09 candidates joined the service and taking note of the fact that the P.A. section of the Patna High Court had reported a dearth of P.As., despite the joining of newly appointed P.As. through direct recruitment, it was directed by the Competent Authority on 26.02.2020 that the services of the contractual P.As. be continued for two weeks till further examination. Thereafter the COVID-19 pandemic broke out and disrupted the workings of the Court which had to be shifted into virtual mode necessitating increased work load of the digitization cell and therefore, the services of the remaining contractual P.As. were utilized therein and the engagement of the aforesaid contractual P.As. were extended from time-to-time. Subsequently, a joint representation dated 09.08.2021 was filed by the petitioners requesting for their substantive appointment on the post of P.A. and the same was placed before the Establishment Committee, which had considered the representation of the petitioners in its meeting held on 14.08.2021 and recommended that the petitioners be continued as P.As. on contract on the present terms and conditions till the conclusion of the impending exercise for direct recruitment of P.As. considering the dearth of trained P.As. and directed the



Registry to take expeditious steps for initiation of recruitment process for P.As. and that the contractual P.As. may be granted age relaxation in the upcoming recruitment exercise subject to approval of the competent authority, which was approved by the Competent Authority on 05.09.2021.

24. It has further stated in the counter affidavit that the petitioners filed yet another representation dated 12.12.2022 praying for their substantive appointment on the post of personal assistant, which was placed before the Establishment Committee on 04.01.2023 and the Committee taking note of several facts including the fact of continuance of service, their work and conduct reports and the petitioners having crossed upper age limit for any other employment, had observed that a sympathetic view be taken. Accordingly, the matter was placed before the Competent Authority and the Competent Authority had directed to place the same before the Standing Committee noting that the moot question was whether absorption /adjustment of the petitioners was permissible under the extant recruitment Rules. The Standing Committee in its meeting held on 09.05.2023 considered the representation of the petitioners and had resolved that *"The representation for regularization is rejected. However the Standing Committee was of the*



unanimous opinion that some relaxation could be granted to the five Personal Assistants appointed on contract basis. In the proposed recruitment, there shall be relaxation of age of five years. In the selection process they would also be given 5 (five) marks for every completed year of service as contract employee. Notification for recruitment shall be issued specifying the weightage given to the contract employees continuing presently in service. Registry to expedite the notification for vacant posts through direct recruitment."

25. It has next been stated in the counter affidavit that the Establishment Committee in its meeting held on 16.05.2023 while approving the draft advertisement and model scheme of Personal Assistant recruitment examination had granted relaxation of 5 years in age and 5 marks for every completed year of service in the second level of process i.e. in the shorthand computer typing test (main) since comparative merit is to be adjudged on the basis of this part of the evaluation process as well as taking into account the marks obtained in interview only whereas the first part of the process i.e. preliminary test is merely qualifying in nature and further that the said weightage would only be for the petitioners subject to the condition that in any case the marks obtained would not



exceed the ceiling of total marks. Accordingly, advertisement no. PHC/03/2023 was issued on 23.8.2023 by the Patna High Court calling for applications for direct recruitment to 36 posts of Personal Assistant through Personal Assistant Recruitment Examination, 2023 wherein the above decisions in the case of petitioners was duly mentioned. In pursuance of the aforesaid advertisement, all the petitioners applied and appeared in the Preliminary Test and the result of the said Preliminary Test was declared on 19.2.2024, in which 312 candidates including the petitioner no.3 were declared qualified to take the mains written test but, it is emphasized by the answering respondent that, the petitioner nos. 1, 2, 4 and 5 did not even qualify in the preliminary test as they scored below the cut off marks in their respective categories. Thereafter, mains examination was conducted and the result of the same was declared, in which 84 candidates were declared qualified to take interview, however, the petitioner no. 3 did not qualify in the main written test as he scored below cut of marks of his unreserved category.

26. After the petitioners failed to qualify in the above recruitment examination of 2023, they again filed a representation dated 27.02.2024 with prayer to allow them to move to the second stage of 2023 examination i.e. the mains



written test directly. The same was notwithstanding the fact that they had not qualified in the first stage i.e. the preliminary test. The same was considered by the Competent Authority and the representation was rejected on 29.03.2024. It has also been asserted in the counter affidavit, as already noted in the preliminary objections raised by the learned counsel for the respondent no. 3 and 4, that the facts regarding rejection of their representation by the Competent Authority has not been brought on record in the writ petition and therefore, the same has been deliberately suppressed by the petitioners.

27. It is the categorical submission on behalf of the respondent no.4 that the case of the petitioners for appointment/absorption as per clause (5) and (6) of their engagement letters dated 31.03.2018 has been considered at three different occasions by the Patna High Court. *Firstly*, on 09.01.2019 by the Competent Authority, *secondly*, on 14.08.2021 by the Establishment Committee of this Court concurring with the decision dated 09.01.2019 and approved by the Competent Authority on 05.09.2021 and *thirdly* on 09.05.2023 by the Standing Committee. It is emphasised that on all three occasions, it was found that the petitioners cannot be appointed / absorbed / regularized on permanent vacancy of the



post of P.As. because there is no provision under the applicable Rules i.e. Patna High Court Officers and Staffs (Condition of Service) Rules, 1997 that a person who has been appointed on contractual basis after having been unsuccessful in selection process held for direct recruitment in pursuance of an advertisement can be taken into regular service by either of the said three modes.

28. The learned counsel for the respondent no. 3 and 4 has next submitted that it is an admitted fact that as per Rule 9(7) of the 1997 Rules and clause 5 of advertisement No. 01/PA/2017 dated 23.3.2017, the procedure for direct recruitment on the post of P.A. was written test and interview and selection was to be made on basis of aggregate marks of these two tests. It is also an admitted fact that the petitioners along with all other candidates were not successful in written test held on 10.12.2017 and thus were never called for interview and the selection process was not continued any further and thus it came to an end. Though the petitioners were unsuccessful candidates in first stage of recruitment process but were appointed purely on contract for a period of 6 months only due to administrative exigencies. Further, it is submitted by the learned counsel for the respondent nos. 3 and 4 that clauses (5)



and (6) of engagement letters dated 31.3.2018, on which reliance is placed by the petitioners, cannot override the statutory provisions of 1997 or 2021 Rules as it is settled law that recruitment can only be in terms of statutory rules and the terms and conditions of advertisement.

29. The learned counsel has placed heavy reliance on the decisions of the Hon'ble Supreme Court in the case of *Malik Mazhar Sultan and Anr. vs. U.P. Public Service Commission & Ors* reported as (2006) 9 SCC 507; *Indian Institute of Technology & Anr. vs. Paras Nath Tiwari & Ors.* reported as (2006) 9 SCC 670 and the decision in the case of *Gridco Ltd & Anr. vs Standards Doloi & Ors.* reported as (2011) 15 SCC 16.

30. It is further submitted by the learned counsel for the answering respondents that even if there existed any right under clauses (5) and (6) of engagement letters dated 31.3.2018 but on reading of the same would clearly show that only a limited right which the petitioners had was a right of consideration of their cases for regular appointment if they were successful in the two tests and the petitioners being successful in qualifying these two tests held on 16.12.2018, their said limited right was given effect to by due consideration of their cases for



regularization thrice i.e. by the Competent Authority on 09.01.2019 and for the second time on 14.8.2021 / 05.09.2021 and finally for a third time on 09.05.2023. Each time, it was found that they cannot be appointed or regularized in view of there being no statutory provisions that a person who has been appointed on contractual basis after having been unsuccessful in selection process held for direct recruitment in pursuance of an advertisement can be taken into regular service. Further, the said two clauses 5 and 6 never provided that as soon as they would pass the two tests they will be regularized *per se* and automatically.

31. It is next submitted that even *arguendo* if a right accrued in favour of the petitioners to be appointed on regular basis as soon as they passed the above two tests in terms of clauses (5) and (6) of the engagement letters, the same in view of the decision of the Competent Authority dated 09.01.2019 stood changed to a new term and condition that they were to continue on contract till regular appointments are made as per Rules after fresh advertisement and again reiterated *vide* office order No.10 dated 05.09.2021 considering their representation dated 09.08.2021. It is stressed by the learned counsel that the petitioners have never challenged this change of



original terms and condition of their contractual appointment before any Court of Law and rather have accepted the same and continued till date with their contract being extended from time to time. Thus, having accepted the said change the petitioners cannot now turn around and claim that the new term and condition of their contractual appointment imposed on 09.01.2019 be changed back to the original term and condition as contained in clauses (5) and (6) of their engagement letters dated 31.3.2018 as it would amount to re-writing the terms and conditions of a contract which cannot be granted to them on any count.

32. It is settled law that appointment can be only made following the rules of recruitment and procedure prescribed thereunder in compliance of Articles 14 and 16 of the Constitution of India and an irregular appointment can be regularized provided provision exist under the applicable Rules. An appointment is irregular for want of compliance of one of the elements in the selection process which does not go to the root of the process.

33. It is argued by the learned counsel for the answering respondents that in the present case admittedly the applicable Rule was the 1997 Rules. The procedure for direct



recruitment to the post of P.A. under Rule 9(7) is (i) English shorthand typing test (ii) English typing test (iii) English language and grammar test (iv) knowledge of computer application test and (v) interview. A candidate to be successful in written test had to obtain the minimum qualifying marks prescribed for each of these four subject tests. On being successful in written test, a candidate could qualify to appear in interview and to qualify in the interview he had to obtain minimum 30% marks. Final selection for appointment as per 1997 Rules was to be on the basis of merit based on aggregate of marks of written test and interview. In the present case, admittedly, the petitioners did not obtain minimum qualifying marks in any of the four subjects of written tests and they also could not obtain minimum qualifying marks when relaxed by 10% each as per *proviso* to Rule 7(9) of the 1997 Rules and were unsuccessful candidates of written test and therefore ineligible for the second stage of recruitment process i.e. interview. Therefore, it is argued that the selection process of the petitioners under Advertisement No. PA/01/2017 dated 23.03.2017 suffered from want of compliance of two mandatory elements under the 1997 Rules, both of which went to the root of the selection process due to performance of the petitioners



themselves, *firstly*, they did not qualify in the first stage i.e. written test in any of the four subjects even on the relaxed criteria and *secondly*, as a consequence of the petitioners being unsuccessful even after the relaxed parameter they were not eligible for the second stage i.e. interview and consequently were never called for the mandatory interview stage. Accordingly, it is argued by the learned counsel for the answering respondents that the petitioners were never selected as per the 1997 Rules being unqualified in first stage and ineligible candidates for the second stage under the said recruitment process and therefore, their services cannot be regularized much less w.e.f. 30.10.2018. Moreover, under the 1997 Rules or the 2021 Rules, there is no provision for regularization of such unqualified and ineligible candidates and therefore, their said claim has been consistently rejected thrice by the aforesaid Authorities after due consideration.

34. The learned counsel for the answering respondents have also argued that it is a settled law that there is no fundamental right in those appointed on contract to claim for absorption or regularization as they cannot be said to be holders of a post since a person can hold a post only after being appointed on regular basis and further that once the period of



contract is over, a contractual employee cannot be granted relief of being directed to be appointed as regular employee. The petitioners cannot say that because work has been taken from them for past eight years, their service should be regularized. The same is because of the Rule position and also because the Hon'ble Supreme Court has held that the State has a right to enter into contract of personal employment and impose conditions not inconsistent with the Constitution and there is no compulsion for a person to enter into such a contract of service and he is free to accept or reject the offer but having accepted it he is bound by it. The learned counsel for the answering respondent has drawn strength in support of his submissions from the decision of the Hon'ble Supreme Court in the case of *State of Orissa vs. Chandra Shekhar Mishra*, reported as (2002) 10 SCC 583; *Secretary to Government, School Education Department, Chennai vs. R. Govindaswamy and others* reported as (2014) 4 SCC 769 and *Gridco Limited and another vs Sadananda Doloi & Ors.* reported as (2011) 15 SCC 16.

35. It is lastly submitted by the learned counsel for the answering respondents that though the petitioners have claimed that the respondent-High Court has previously in the



year 2015 appointed P.As. substantively, who were originally selected on *ad hoc* and on contractual basis but, the aforesaid claim of the petitioners is misleading as the said persons appointed in the year 2015 are not similarly situated persons as they were appointed in the year 2015 on probation in terms of *proviso* to Rule 7(9) of Part V of the 1997 Rules *vide* Notice dated 07.11.2015. The said *proviso* empowers the High Court to appoint candidates on probation for a period of one year who have secured 10% less than the minimum qualifying marks in any of the above four subjects of written test but have obtained 30% minimum qualifying marks in interview with the condition that they will obtain the minimum qualifying standards within the said period in respect of the subject of deficiency. This *proviso* to Rule 7(9) was added *vide* Amendment to 1997 Rules w.e.f. 18.9.2015 i.e. before the said appointment on 07.11.2015 and therefore, the Notice for interview dated 06.07.2015 also clearly states "*as per proviso advertised*" and was duly incorporated in clause 5 of Advertisement No. PA/01/2017 dated 23.3.2017 under which the petitioners had applied but, as stated above, none of the petitioners could qualify the four subjects of written test even with the said relaxation of 10% in the minimum qualifying marks to be called for interview whereas



those appointed on 07.11.2015 had qualified with 10% relaxation and faced interview before their appointment in terms of the said *proviso* to Rule 7(9) of 1997 Rules. It is, therefore, the contention that no parity can be claimed by the present petitioners in so far as the recruitment in the year 2015 is concerned. The petitioners have also claimed that they have discharged the same duties as regular P.As. and they have also satisfactorily discharged their duties. In this regard, the learned counsel for the answering respondents has submitted that the petitioners had participated in two direct recruitment process for appointment on the post of P.A. vide Advertisement Nos. PHC/02/2019 dated 21.9.2019 and PHC/03/2023 dated 23.8.2023. In both these recruitment processes, none of them were successful. Thus, when with their claimed experience of work of P.As. in the Patna High Court, the petitioners were not able to obtain even the minimum qualifying standards in two different direct recruitment for the said same post whereas other fresh candidates even without such similar experience could obtain them and qualify to be appointed on regular basis speaks volumes about their competence and thus their being taken into service would not be in the interest of administration of justice of this Court.



36. The petitioners have filed a rejoinder to the counter affidavit filed by the respondents. In the rejoinder affidavit, it has been stated that the assertion of the answering respondents that the petitioners had failed to qualify the minimum standard and even the relaxed minimum standard is not correct since no statement of marks was ever published by the High Court showing individual/separate marks of each candidate. The petitioners only came to know through the notice dated 31.03.2018 that they were amongst the unsuccessful candidates who were called for to be engaged on contract basis.

37. The learned counsel for the petitioners has next submitted that they have duly qualified a harder/tougher examination, *viz.* the English Shorthand Typing Test and English Typing Test which were held on 16.12.2018. It is the categorical submission for the petitioner that the statutory accuracy of 90% in English Shorthand Typing test and 95% in English Typing Test have been successfully qualified under clause 5 of the letter of engagement. Therefore, it is the submission that in view of clause (6) of the aforesaid letter of engagement, the petitioners having successfully qualified in the test conducted on 16.12.2018, should have been appointed against the regular substantive posts.



38. In this case, the petitioner no.2 namely, Sunny Katyayan has filed a supplementary affidavit stating that during the pendency of this writ petition he has been appointed as Stenographer (English) in the establishment of Civil Court, Nawada and therefore, he had decided to resign from the services of this Court in order to enable him to join in the Civil Court. The petitioner no.2 states that he reserves his right to prosecute the present writ as well as the right to hold the post of P.A., in the event this writ petition succeeds.

39. I have considered the elaborate pleadings and the records of the case and also considered the submissions advanced by the parties.

40. Before proceeding with the matter, the preliminary objections raised by the answering respondents is required to be dealt with. In the considered opinion of this Court, the objections raised by the answering respondents is not appealing this Court in view of the fact that the respondent-High Court had itself repeatedly granted extensions of engagement of the petitioners and therefore, the question of limitation does not arise from the date of examination conducted on 16.12.2018 and in the same background, the suppression of material facts also assumes lesser relevance. Further, the question of regularization



of the petitioner in the ministerial establishment of the High Court squarely falls within the purview of Article 226 of the Constitution of India. Therefore, this writ petition is held to be maintainable.

41. Now, coming to the case, the Patna High Court *vide* a public advertisement dated 23.03.2017 had advertised for direct recruitment to 100 vacant permanent posts of P.A. and responding thereto, candidates including the instant petitioners duly applied and appeared in the first phase of the recruitment examination i.e. the online test held on 10.12.2017 in the following manner, as mentioned in notice dated 07.12.2017:-

i.	Test-I: Shorthand Dictation and Typing Test	(28 minutes)
ii.	Test-II : Knowledge of Computer Application Test	(10 minutes)
iii.	Test-III : English Language and Grammer Test	(20 minutes)
iv.	Test-IV : English Typing Test	(10 minutes)
Total		(68 minutes)

42. Pertinently, the online test, which consisted of four tests, had individual minimum passing threshold as elucidated in the aforementioned advertisement dated 23.03.2017. It is imperative to note that the Patna High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1997 which occupied the field and the relevant mode of recruitment for the



post of P.A. reads as under :-

“By direct recruitment on the basis of

(i) English shorthand-typing test with minimum speed of 100 words and 40 words per minute respectively.

(ii) Typing (English) speed of 40 words per minute.

(iii) English language and grammar test.

(iv) Knowledge of Computer applications.

(v) Oral Interview.

The minimum qualifying standard will be :-

(i) Accuracy of 90 % in English Shorthand typing test;

(ii) 95 % in English typing test;

(iii) 60 % marks in English Language and grammar test;

(iv) 60 % marks in computer application test,

(v) 30 % marks in oral interview

Provided that except in regard to interview, if any candidate secures 5 % less than the minimum excepted marks in any of the above, he may be selected purely on adhoc basis for one year, during which period he will have to clear the expected minimum qualifying standard in two biannual tests held in respect of the subject of deficiency. Unless regular appointment is made by specific order, candidate will continue to be an ad hoc appointee. If the candidate clears the expected minimum qualifying standard within the period of Ad-hoc appointment, he shall be duly appointed in the cadre on regular basis, failing which, he shall



be declared unfit for appointment in the cadre.

Provided further that those candidates, other than above and other than in relation to marks secured in interview, who secure 10 % below the minimum expected the qualifying marks in any of the tests aforesaid may be considered for selection purely on contractual basis for a maximum period of one year as Stenographer on contract and if in biannual test held, he fails to obtained the minimum expected qualifying marks in the area of deficiency, his contracts shall stand automatically terminated. On clearing the test and attaining the standard within the contract period, they may be considered for appointment subject to vacancy.

The contractual consolidated payment would be equivalent to the basic grade with no increment or other benefits till they become eligible for appointment in the cadre on regular basis.

xxx.”

43. The Clause-5 of the advertisement published on 23.03.2017 reads as under:-

“5. Mode of Appointment

By direct recruitment on the basis of (i) English shorthand-typing test with minimum speed of 80 W.P.M. for 240 words only i.e. at the rate of 80 W.P.M. for 3 minutes and 20 minutes for its transcription along with 5 minutes for revision of shorthand immediately after dictation, followed by intensive in-house training for three months thereafter (ii) Typing



(English) speed of 40 words per minute (iii) English language and grammar test (iv) Knowledge of Computer applications (v) Oral Interview.

The minimum qualifying standard will be:- (i) Accuracy of 90% in English Shorthand typing test; (ii) 95% in English typing test; (iii) 60% marks in English Language and grammar test; (iv) 60% marks in computer application test, (v) 30% marks in oral interview.

Provided that, except in regard to interview, if any candidate secures 10% less than the minimum qualifying marks in any of the above, he may be selected and appointed on probation for one year with the stipulation that within that period he will have to clear the minimum qualifying standard in two biannual tests to be held in respect of the subject of deficiency; the probation may be extended, at the discretion of the Chief Justice for up to two further six months period with the similar stipulation of clearing the minimum qualifying standard in the test to be held.

Age:- Age of candidate as on 01st January 2017 shall not be less than 25 years and shall not be more than 35 years”

44. Be it noted that the minimum qualifying standard was prescribed as 90% in English shorthand typing test, 95% in English typing test, 60% in English Language and Grammer Test and 60% in computer application test. The



proviso to the aforesaid clause (5) also provisioned for a relaxation of up to 10% in the following manner:-

	Qualifying threshold under clause-5 of the recruitment advertisement	Qualifying threshold after relaxation under proviso to clause-5 of the recruitment advertisement
Test-I Shorthand Dictation and Typing Test	90%	80%
Test-II Knowledge of Computer Application Test	95%	85%
Test-III English Language and Grammer Test	60%	50%
Test-IV English Typing Test	60%	50%

45. From the reading of the aforesaid Rules of 1997 as well as the stipulation contained in the Advertisement dated 23.03.2017, it is clear that the aforesaid advertisement was in consonance with the extant Rules.

46. Since none of the appearing candidates could meet the prescribed minimum threshold or even the relaxed threshold, it was decided that the top 100 candidates, from amongst the non-qualified, would be engaged purely on contractual basis for a fixed period of six months on a consolidated pay of Rs 30,000/-, in order to meet the emergent need of P.As. in this High Court. The individual engagement letters were issued, which contained the stipulation under clauses (5) read with clause (6) providing a path towards regular appointment to the substantive regular post of P.A. on probation by putting them on regular pay scale of the post plus usual



allowances. The tenure of such contractual employees were extended from time-to-time and finally the examination as stipulated under the clauses (5) and (6) of their engagement letters were conducted on 04.11.2018, however the appearing candidates again failed to meet the criteria and once again it was decided by the Competent Authority to conduct a fresh examination on 16.12.2018 in Court premises, which finally resulted in 35 out of 41 candidates clearing the examination by meeting the required minimum marks and 06 candidates failed to meet such threshold and their contract was terminated. Though the petitioners stood successful in the examination conducted on 16.12.2018, but they were not appointed on regular basis in pursuance of the clauses (5) and (6) of their engagement letters and rather they were continued on contractual basis on the very same terms and conditions on which their initial engagement was made. Their tenure was extended till the then upcoming regular recruitment process, however, even subsequently the petitioners were continued on contractual basis by extending their period of engagement, the latest being the Office Order dated 05.09.2021.

47. This Court has duly noted that the notice dated 30.10.2018 issued by the respondent-Registrar General of



this Court, clearly mentions that the examination was for the purposes of regularizing the services of the appearing candidates. To lay ample emphasis, this Court deems it appropriate to reproduce the relevant paragraph of the aforesaid notice dated 30.10.2018, which is as under:-

*“It is notified that qualifying examination/ test of English Shorthand Typing and English Typing test **for regular appointment** of 42. Personal Assistants engaged on contract basis for a period of six months, is going to be held on 4th November, 2018, as per notice containing schedule, scheme & venue attached herewith.
Xxxx”*

48. It is therefore patently clear, that the examination which was conducted by the respondent authorities on 16.12.2018 was an additional opportunity granted to the petitioners in continuation with the examination conducted on 04.11.2018 which itself was clearly for the express purpose of regular appointment against the post of P.A. Therefore, in the considered opinion of this Court, the examination conducted on 16.12.2018 was in pursuance of clauses (5) and (6) of the engagement letters which was meant for regularizing the services of the petitioners. Once the petitioners stood duly qualified in the examination conducted on 16.12.2018, they ought to have been appointed on regular substantive post of P.A.



on probation as stipulated specifically under clause (6) of the engagement letters, but instead of doing so, they were continued on contractual basis on the very same terms and conditions on which they were originally engaged. It is underscored that no fresh engagement letters with modified or altogether new terms and conditions were provided, and the terms and conditions of original engagement letters were simply extended. This, in the considered opinion of this Court, creates an incongruous situation since if the stipulation regarding continuation of the qualified candidates continuing on the same terms and conditions is accepted, it would mean that clauses (5) and (6) still subsist and therefore, the Competent Authority appears to have decided to keep open the path towards regularization for the petitioners, however till date no steps for regularization of the service of the petitioners has been taken.

49. The contention of learned counsel for the respondent nos. 3 and 4 that the decision dated 09.01.2019, by which the Competent Authority had decided to continue the services of the petitioners on contract basis, has changed the terms and conditions of engagement, is not appealing to this Court since no such express stipulation altering, changing or modifying the conditions of engagement has been made by the



answering respondents. Therefore, this incongruous situation is unsustainable and could not be allowed to perpetuate anymore.

50. Moreover, this Court has noted the following aspects. *Firstly*, in clauses (5) and (6) of the engagement letters of the petitioners, the respondents themselves had provided a path towards regularization of the contractual service of the petitioners subject to the condition of them qualifying the test. *Secondly*, the respondents despite conducting the examination on the pretence and for the express purpose of regularizing the services of the contractual P.As, including the petitioners, had failed to appoint the petitioners against substantive permanent post even after admittedly they had duly qualified the tougher/harder examination which was held on 16.12.2018. *Thirdly*, the extensions of engagement tenure were granted periodically to the petitioners by the respondent authorities themselves which today stands cumulatively at about eight years of continued uninterrupted service, which is akin and indistinguishable to that of a regular P.A. appointed on a substantive permanent post. *Fourthly*, during the continued service of about eight years, there is nothing on record to show that the work and conduct of the petitioners was/is unsatisfactory.



51. Though the learned counsel for the respondent nos. 3 and 4 has heavily relied upon the decision of the Hon'ble Supreme Court in the case of *State of Karnataka vs. Uma Devi* reported as *AIR 2006 SC 1806* to repel the claim of the petitioners for regularization but, the aforesaid judgment does not bar the petitioners' claim since there is not an absolute bar for regularization. The decision of *Uma Devi (Supra)* itself carves out an exception for such cases where employees have been working for a long period and were not appointed through a backdoor or in violation of constitutional requirements. In the present case, the appointment of the petitioners cannot be said to be illegal but at best may be said to be irregular, and as such, irregularity stood cured by virtue of the petitioners qualifying the examination conducted on 16.12.218 together with long continuation of service and multiple extensions of their engagement.

52. Further, the Hon'ble Supreme Court in the case of *Dharam Singh (supra)* has held as under:-

“10. It must be noted that the premise of “no vacancy” is, in any event, contradicted by the evidence on record. An RTI response of 22.01.2010 received from the office of Respondent No.2 indicated existence of Class-IV vacancies. Furthermore, I.A. No. 109487 of



2020 filed before this Court by the appellants specifically pointed to at least five vacant Class-IV/Guard posts and one vacant Driver post within the establishment. That application also set out the names of similarly situated daily wagers who were regularised earlier within the same Commission. No rebuttal was filed to the I.A. The unrebutted assertion of vacancies and the comparison with those who received regularisation materially undermine the High Court's conclusion that no vacancy existed and reveal unequal treatment vis-à-vis persons similarly placed. Selective regularisation in the same establishment, while continuing the appellants on daily wages despite comparable tenure and duties with those regularized, is a clear violation of equity.

11. Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non-suit the appellants is misplaced. Unlike Umadevi (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has



failed, for years, to put its house in order. Recent decisions of this Court in Jaggo v. Union of India and in Shripal v. Nagar Nigam, Ghaziabad have emphatically cautioned that Umadevi (Supra) cannot be deployed as a shield to justify exploitation through long-term “ad hocism”, the use of outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case...

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



their duties, and the material indicating vacancies and comparator regularisations....

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling “reconsiderations,” and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learnt that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India.”

(emphasis supplied)



53. The Hon'ble Supreme Court in the case of *Jaggo Vs. Union of India (supra)* relying on the judgment passed in *Vinod Kumar and Ors. Etc. Vs. Union of India & Ors.*, reported in *(2024) 1 S.C.R. 1230* has made the following observations:-

“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 and Ors. Etc. Vs. Union of India & Ors. [2024] 1 S.C.R. 1230, it was 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.*

xxxx

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.

xxxxx

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, the 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.” (emphasis supplied).*

54. Further, the Hon’ble Supreme Court has recently reiterated the same in the case of ***Shripal & Anr. vs.***



Nagar Nigam, Ghaziabad reported as *2025 SCC OnLine SC 221* and has held as follows:-

"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."

(emphasis supplied)

55. Applying the law from the afore-quoted judgments and considering the peculiar facts of the present case, it emerges that the path towards regularization was provided by the respondents itself in the engagement letters under clauses (5) and (6). At no point of time, the stipulation under clauses (5) and (6) was found illegal nor the same was modified, altered or



withdrawn. On the contrary, with each subsequent extension on the same terms and conditions, the aforesaid clauses subsisted. The petitioners have continuously served for the past about eight years and during this period no adverse conduct was found. Further, pertinently the nature of work of the petitioners is indeed perennial and the work is also undoubtedly akin and indistinguishable to that of the P.As. appointed on substantive regular post. Further, there is nothing in the counter affidavit to show that the engagement of the petitioners on contract basis and the subsequent examination on 16.12.2018, in which they were ultimately found successful was *de hors* the engagement letters or the Rules. At the cost of repetition, the path for regularization of services of the petitioner through an examination was provided by the respondents itself and now the respondents cannot turn around to contend that the examination was for limited purpose of considering their case for regularization. Further, the respondents have not been able to bring any document to show that there has been an adverse work and conduct report against the present petitioners.

56. Considering the aforesaid discussions and also the law laid down by the Hon'ble Supreme Court, as indicated in the preceding paragraphs, this Court in the peculiar



facts and circumstances of the case of this case and also in the interest of justice, deems it appropriate to direct the respondents to regularize the services of the petitioner nos.1, 3, 4 and 5 with effect from the date of filing of this writ petition i.e. 09.05.2024 within four weeks from today.

57. This Court, upon considering the peculiar facts and circumstances of the case directs for regularization of the petitioner nos.1, 3, 4 and 5 with effect from the date of filing of this writ petition in order to strike a fair balance between the competing submissions advanced by the parties and adhere to principles of equity, fairness and non-arbitrariness.

58. As a consequence of the regularization of services of petitioner nos. 1, 3, 4 and 5, they shall be entitled to only momentary benefits from the date of regularization which shall be made effective from the date of filing of the present writ petition. Further, the order shall not affect the present and settled seniority in the cadre in which the petitioner nos. 1, 3, 4 and 5 are being regularized.

59. The petitioner no.2 has duly resigned from the engagement in order to join his services in Civil Court, Nawada and after its acceptance the relationship flowing from the letter of engagement has been severed permanently.



Therefore, the reliefs which has been granted is limited to the petitioner nos. 1, 3, 4 and 5 only.

60. With the aforesaid observations and directions, the present writ petition is allowed in the above terms.

(Sandeep Kumar, J)

P. Kumar/-
Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	13.10.2025
Uploading Date	09.01.2026
Transmission Date	

