AFR

ORISSA HIGH COURT : CUTTACK

WA No.119 of 2025

In the matter of an Appeal under Article 4 of
the Odisha High Court Order, 1948
read with
Clause 10 of the Letters Patent constituting
the High Court of Judicature at Patna
and
Rule 6 of Chapter-III and Rule 2 of Chapter-VIII
of the Rules of the High Court of Odisha, 1948

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Sri Prafulla Kumar Behera
Aged about 54 years
Son of Late Sansari Behera
At: Pandara, P.O.: G.G.P. Colony
Bhubaneswar, District: Khordha,
Working as Contractual Driver
Office of the Regional Transport Officer
Puri, District: Puri. ... Appellant

-*VERSUS*-

1. State of Odisha
Represented through
The Principal Secretary to Government
Commerce and Transport
(Transport) Department
Odisha, Bhubaneswar.

2. Principal Secretary to Government
Finance Department, Odisha
Bhubaneswar
District: Khordha.

3. Transport Commissioner-*cum*-Chairman
State Transport Authority, Odisha
Cuttack.

4. Regional Transport Officer
Puri, At/P.O./District: Puri. ... Respondents.

Counsel appeared for the parties:

For the Appellant	:	M/s. Prasanta Kumar Mishra, Kamal Lochan Kar and Sidhant Mishra, Advocates
For the Respondent Nos.1 & 2	:	Mr. Saswat Das, Additional Government Advocate
For the Respondent Nos.3 & 4	:	Mr. Pravakar Behera, Standing Counsel for Transport Department

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 12.05.2025 :: Date of Judgment :19.06.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

This intra-Court appeal is directed against the Judgement dated 17.12.2024 rendered by a learned Single Bench in an application, bearing W.P.(C) No.2160

of 2020, under Article 226/227 of the Constitution of India with the following prayer(s):

"It is prayed, therefore that this Hon'ble Court may graciously be pleased to:

(i) Admit and allow the Writ Appeal,

(ii) Issue notice to Respondents and after hearing be pleased to set aside the Judgment dated 17.12.2024 under Annexure-1 passed by the Hon'ble Single Judge in W.P.(C) No.2160 of 2020 and:

(iii) Further be pleased to allow the W.P.(C) No.2160 of 2020 by granting the relief(s) prayed therein [1] in favour of the Appellant-Petitioner with direction upon Respondents to regularize his service as Driver under regular establishment with all consequential service and financial benefits with effect from the date of completion of six years of service i.e.

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1 The relief(s) sought for in the writ petition reads as follows:

"It is prayed therefore that this Hon'ble Court may graciously be pleased to:

(i) Issue RULE NISI calling upon the opposite parties to show cause as to why the impugned orders vide No.658/TC dated 14.01.2020 at Annexure-1, vide No.13642 dated 24.11.2018 at Annexure-2 and vide No.204 dated 16.01.2020 at Annexure-14 shall not be quashed and the service of the Petitioner shall not be regularized as Driver under regular establishment with effect from the date of completion of six years of service as contractual Driver with all consequential service and financial benefits;

(ii) And if the Opposite Parties fail to show cause or show insufficient cause, the rule may be made absolute against Opposite Parties and a writ of mandamus may be issued to the Opposite Parties and be pleased to quash the impugned orders vide No.658/TC dated 14.01.2020 at Annexure-1, vide No.13642 dated 24.11.2018 at Annexure-2 and vide No.204 dated 16.01.2020 at Annexure-14 with a direction to Opp. Parties to regularize the service of Petitioner as Driver under regular establishment with effect from the date of completion of six years of service as contractual Driver with all consequential service and financial benefits within a time to be stipulated by this Hon'ble Court;

(iii) Pass such other order (s), direction(s) as deem fit and proper to the facts and circumstances of the case to give complete relief to the petitioner;

And for this act of kindness, the petitioner as in duty bound shall ever pray."

01.10.2015 as Contractual Driver within a stipulated period of time and;

(iv) *Further be pleased to direct the Respondent Nos.3 and 4 to release the un-paid remuneration from January, 2020 in favour of the Appellant within a stipulated period of time.*

(v) *And further be pleased to pass such other order (s), direction(s) as deem fit and proper to the facts and circumstances of the case to give complete relief to the Appellant;*

And for this act of kindness, the Appellant as in duty bound shall ever pray."

Facts:

2. Shorn off unnecessary detailed narration of facts as adumbrated by the appellant leading to filing of this writ appeal, suffice here to describe herein below the following:

2.1. Office vehicles in Chandikhole, Bhubaneswar, Ganjam, Rourkela, Sambalpur, Bargarh, Principal, Driving Training School, Bhubaneswar and Deputy Commissioner, Transport (North Zone), Sambalpur, said to have kept idle due to shortage of staff, for smooth enforcement and administration of motor vehicles, the concerned Regional Transport Offices, Deputy Commissioner, Transport (North Zone), Sambalpur and Principal, Driving Training School, Bhubaneswar, were authorised to engage "contractual driver with condition

to renew every year" *vide* Office Order in Letter No.IX-112/08-7551/TC, dated 11.06.2009.

2.2. Being so authorised, the appellant besides other similarly placed persons was engaged by Regional Transport Officer, Bhubaneswar, as Contractual Driver against a vacant post to drive a Jeep bearing Registration No.OR-02-AF-3003 *vide* Order No.6172, dated 01.10.2009, pursuant to which he joined in service and continued to work as such till date in the Office(s) of the Regional Transport Officer.

2.3. Having joined on 01.10.2009, the appellant should have been regularised with effect from 01.10.2015 as he completed six years of service. He is deemed to have been regularised in terms of Clause 2 of the Government of Odisha in General Administration Department, Odisha *vide* Resolution No.26108-GAD-SC-RULES-0009-2013/Gen, dated 17.09.2013 (for convenience referred to as "GAD Resolution, 2013").

2.4. Ignoring the case of the appellant for regularisation in the service, four Contractual Drivers out of 14 Contractual Drivers were appointed on regular basis. The appellant approached the learned Odisha Administrative Tribunal, Bhubaneswar by way of Original Application, registered as O.A. No.1234 of 2018, under Section 19 of the Administrative Tribunals Act,

1985, for a direction to the authorities concerned to regularize his service as Driver. Pending this original application, the Respondent No.3 *vide* Letter No.12133, dated 06.08.2016 forwarded the details of remaining ten numbers of Contractual Drivers (including appellant) recommending regularisation of their service as Drivers. Accordingly, the learned Tribunal *vide* Order dated 12.01.2018 allowed said Original Application with a positive direction.

2.5. The High Power Committee (for short, "HPC") in its Meeting held on 10.10.2018 flouted such direction of the learned Tribunal and rejected the claim of the appellant *vide* Office Order in Letter No.13642/TC, dated 24.11.2018 issued by order of the Transport Commissioner in the Office of the Transport Commissioner-*cum*-Chairman, State Transport Authority, Odisha, Cuttack (for short, "STA").

2.6. While the authorities concerned were contemplating action to disengage the appellant, writ petition, being W.P.(C) No.2160 of 2020, was filed and in consideration of the plight of the appellant, the learned Single Judge while issuing notice to the opposite parties *vide* Order dated 22.01.2020 issued following interim direction:

"As an interim measure, this Court directs that status quo as on today shall be maintained by the parties till the next date.

It is further directed that the pendency of the writ petition shall not stand as a bar for considering the case of the petitioner for regularisation for being appointed as regular driver."

2.7. The appellant stated to have served copies of writ petition on counsel for the opposite parties on 24.01.2020 and communicated the interim order passed by the learned Single Judge enclosed with a representation on 29.01.2020 to the Regional Transport Officer (Respondent No.4). However, on 06.02.2020 without following the principles of natural justice, referring to the impugned Order dated 14.01.2020 of the Additional Commissioner, Transport (Administration), STA, Odisha, said Regional Transport Officer issued Order No. 204/RTA, purported to have been passed on 16.01.2020 whereby the appellant is shown to have been disengaged from service. Said Order 16.01.2020 was served on the appellant on 06.02.2020 through peon book.

2.8. Questioning tenability of such order purported to have been passed on 16.01.2020, being served on the appellant on 06.02.2020, *i.e.,* after the learned Single Judge passed the interim Order dated 22.01.2020 in the writ petition, the appellant sought for amendment of writ petition incorporating necessary details, which led to filing of consolidated writ petition being interlocutory application stood allowed.

2.9. Other nine Contractual Drivers also approached this Court by way of filing W.P.(C) Nos.2157, 2159, 2162, 2234, 2237, 2241, 2245, 2246 and 26231 of 2020, which were disposed of along with writ petition of the appellant being W.P.(C) No.2160 of 2020 *vide* common Judgment dated 17.12.2024 passed in W.P.(C) No.2157 of 2020 & batch. The Order dated 17.12.2024 passed in the case of present appellant in W.P.(C) No.2160 of 2020 reads as under:

> *"1. This matter is taken up through hybrid arrangement.*
>
> *2. In view of the common judgment passed today in W.P.(C) No.2157 of 2020*[2]*, this writ petition is disposed of.*
>
> *3. Interim order, if any, passed earlier, stands vacated."*

2.10. Being not satisfied, the writ appeal has been filed by the appellant craving to set aside the Judgment dated 17.12.2024 passed in W.P.(C) No.2160 of 2020 with prayers to issue of direction(s) to absorb him and in

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[2] The learned Single Judge has arrived at the following "conclusion" *vide* Judgment dated 17.12.2024 passed in W.P.(C) No.2157 of 2020 and batch:

*"****

15. Upon analyzing the facts, this Court is not inclined to interfere with the decision of the High Power Committee in rejecting the regularization of the service of the petitioner.

16. In light of the foregoing, this Court finds no merit in the petitioner's plea to interfere with the denial of regularization or the decision to disengage from service.

17. Consequently, all the above mentioned Writ Petitions are hereby dismissed.

18. Interim order, if any, passed earlier, in any of the Writ Petitions, stands vacated."

consequence thereof grant all consequential service and financial benefits.

Hearing:

3. The matter was on board under heading "Fresh Admission".

3.1. Since short point, whether the learned Single Judge could have intermeddled with the irrational reasoning ascribed to by the HPC in order to disengage the appellant from service instead of considering the case of the appellant, Contractual Driver, for regularisation in service, though he worked as such for substantial number of years before interim protection was granted by this Court, is involved, on the consent of the counsel for the parties, this matter is disposed of at the stage of "Fresh Admission".

3.2. Upon hearing Sri Prasanta Kumar Mishra, learned Advocate for the appellant, Sri Saswat Das, learned Additional Government Advocate for Respondent Nos.1 & 2 and Sri Pravakar Behera, learned Standing Counsel for Transport Department-Respondent Nos.3 &4, this Court proceeded to finally adjudicate the matter on merit.

3.3. On conclusion of arguments advanced by the respective counsel for the appellant as well as the respondents on

12.05.2025, the matter stood reserved for preparation and pronouncement of Judgment/Order.

Rival contentions and submissions:

4. Sri Prasanta Kumar Mishra, learned counsel for the appellant with the above factual backdrop submitted that the learned Single Bench has proceeded to decide the matter pondering heavily the terms of GAD Resolution dated 16.01.2014, and dismissed the writ petition acceding to the reasons ascribed by the HPC while rejecting the claim of the appellant for regularisation in service.

4.1. He would urge that when the learned Odisha Administrative Tribunal while disposing of Original Application, being O.A. No.1234 of 2016, *vide* Order dated 12.01.2018 allowed the prayer(s) for regularisation in service. After addressing the stand taken by the respondents, having regard to the plight of the appellant, directed the authorities "to regularise the services of the applicant as recommended *vide* Letter dated 06.08.2016" "as has been done in the case of similarly situated drivers", (copy of order was available at Annexure-12 of the writ petition). Therefore, it is forcefully argued that the HPC showing scanty regard to the finding of fact and clear-cut direction, it rejected the claim for regularisation in service by adhering to General

Administrative Department advisory in terms of GAD Circular No.16645/Gen., dated 30.07.2016 [3] . Such decision of the HPC in brushing aside the recommendation of the appointing authority, who was duly authorised to appoint/engage Contractual drivers, rejection of claim of the appellant is not only unsustainable in law, but also the order of disengagement of the appellant tends to violation of rule of law, being not in consonance with the directions of the learned Odisha Administrative Tribunal. He would submit that the impugned Judgement of the learned Single Judge is, thus, flawed and cannot be countenanced. He, therefore, prayed to allow the writ petition.

4.2. It is painstakingly submitted by Sri Prasanta Kumar Mishra, learned Advocate that having joined on 01.10.2009 by virtue of Office Order dated 01.10.2009 of the Regional Transport Officer, the appellant completed six years of continuous service as a Contractual Driver on 30.09.2015. Therefore, in terms of GAD Resolution, 2013 the regularisation in service of the appellant should have been considered by the HPC, but reliance could not have been placed on the Circular dated

[3] See, copy of "Proceeding of High Power Committee Meeting for regularization of Contractual Data Entry Operators and Drivers" held on 10.10.2018 as enclosed as Annexure-B/3 to the counter affidavit filed on behalf of the STA in connection with the writ petition, being *W.P.(C) No.2157 of 2020 (Sri Krodapati Saraf Vrs. State of Odisha)* disposed of *vide* impugned common Judgment.

30.07.2016. It is submitted that the Circular could not have the overriding effect over the Resolution, 2013.

4.3. The alternative argument of the counsel is that even if it is assumed that there was non-fulfilment of conditions stipulated in General Administration Department Resolution No.1066-GAD-SC-RULES-0009/2013/Gen., dated 16.01.2014 ("GAD Resolution, 2014", for short), the terms of such Resolution could not be applied to the present fact-situation to disqualify the claim for regularisation in service as the same has prospective in operation. Expanding his argument, learned counsel urged that the appellant had been engaged against a sanctioned post under Scheduled Caste category prior to GAD Resolution, 2013 read with GAD Resolution, 2014.

4.4. It is matter of record which was conspicuously ignored by the learned Single Judge that prior to passing of interim order in the year 2020 in the writ petition, the appellant had already completed 10 years of service as Contractual Driver. It is vehemently contended that out of fourteen Contractual Drivers, four Contractual Drivers have been regularized whereas ten contractual drivers are discriminated. This arbitrariness in action of the respondents clearly transgressed the provisions enshrined in Article 14 of the Constitution of India and such action has been deprecated by the Hon'ble Supreme Court of India in very many cases.

4.5. Therefore, the judgment dated 17.12.2024 passed by the learned Single Bench in W.P.(C) No.2160 of 2020 is liable to be set aside and the prayer made in the writ petition is insisted to be allowed.

4.6. Learned counsel for the Appellant further advanced submission that the authority concerned without giving reasonable opportunity to the appellant sought to disengage him and rejected the claim for regularization in service. He, relying on Letter dated 31.10.2016 (Annexure-11 to the writ petition), submitted that the Office of the Transport Commissioner-*cum*-Chairman, State Transport Authority, Odisha, Cuttack recommended the cases of the Contractual Drivers including the appellant for regularisation in service to the Under Secretary to Government, Commerce & Transport (Transport) Department, Odisha, Bhubaneswar. It is, therefore, contended with vehemence that the learned Single Judge having ignored to take into consideration facts stated therein, simply relied heavily on the reasons of the HPC. As the reasons are contrary to the material fact as reflected in the Letter of recommendation, the writ appeal deserves to be allowed.

5. Sri Saswat Das, learned Additional Government Advocate, opposing the contentions of the learned counsel for the appellant, made valiant attempt to

present before this Court that pursuant to direction contained in Order dated 12.01.2018 passed in *O.A. No.1234 of 2016 (Prafulla Kumar Behera Vrs. State of Odisha)*, the HPC has committed no mistake in analysing the fact-situation of the case while taking apt decision to reject the claim of the appellant for regularisation in service. Considering the nature of engagement of the appellant, said Committee applied the conditions as spelt out in the GAD Resolution, 2014. Having found non-fulfilment of such conditions, the HPC denied regularisation in service.

5.1. The learned Additional Government Advocate referring to "Conclusion" arrived at by the learned Single Judge would submit that each conditions stipulated in the GAD Resolution, 2014 has been kept in view by the learned Single Bench. Since the sanction of post is the prerogative of the Government, the High Court in exercise of power under Article 226 of the Constitution of India cannot issue writ of *mandamus* to create or sanction posts. The appellant having not been appointed/engaged against sanctioned post, the HPC was legally justified in rejecting the claim for regular appointment.

5.2. Having failed to substantiate the claim *vis-à-vis* the conditions envisaged in the GAD Resolution, 2014, the

appellant, Contractual Driver, is not entitled to be regularised in service.

5.3. Thus, the learned Additional Government Advocate as also the Standing Counsel for Transport Department argued that parity claimed attune with the cases of four Contractual Drivers who were regularised stemming on provisions of Article 14 of the Constitution of India cannot be sustained inasmuch as the HPC in its Meeting dated 10.10.2018 (Annexure-B/3 of the Counter Affidavit) clearly stated that "since none of the provisions of GA Department (Resolution) are fulfilled the regularisation order No.11547/TC, dated 31.08.2015 made in respect of four numbers of Drivers by STA is to be revoked". Hence, it is insisted by the counsels for the respondents that stance of the appellant, sans merit, is liable to be rejected.

Analysis and discussions:

6. At the outset this Court takes up the issue whether there is any scope left in view of Order dated 12.01.2018 of the Odisha Administrative Tribunal passed in O.A. No.1234 of 2016 *(Prafulla Kumar Behera Vrs. State of Odisha)* to delve into the factual merit of the claim of the appellant by the HPC.

6.1. Pertinent observations contained in the said Order passed by the Odisha Administrative Tribunal runs as follows:

"The applicant who was working as a driver on contractual basis, has sought for a direction for regularisation of his service, as has been done in the case of similarly situated persons vide Order dated 31.08.2015.

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Learned Standing Counsel, basing on the counter submitted that the applicant has not been selected following the regular recruitment process and following the GA Department Resolution No.1066, dated 16.01.2014. It is submitted that as the applicant does not fulfil the mandatory eligibility criteria, he is not eligible for regularisation.

From the documents produced by the applicant, it appears that the applicant was initially engaged on contingent paid daily wage basis for 15 (fifteen) days in a month with effect from 30.04.2007 vide Order dated 02.05.2007 (Annexure-1). Thereafter, the applicant was engaged as contractual driver vide Order dated 01.10.2009 and was also directed to perform the duty of a driver vide Order dated 31.07.2011. ***It appears from the letter of the Government in Commerce and Transport Department dated 25.04.2008 that Government in Finance Department have concurred the proposal for engagement of 14 drivers.*** *Accordingly vide Letter dated 31.10.2016, Transport Commissioner requested the Government for regularisation of 14 drivers stating that* ***those drivers***

have been engaged, following the recruitment procedure as well as the principle of reservation. *The name of the applicant appears at Sl.No.9 of the list. Thereafter, vide Order dated 31.08.2015, four drivers have been appointed on regular basis on successful completion of six years of uninterrupted contractual service.* ***The stand of the State-respondent in the counter is that the applicant has not been appointed following due procedure which contradicts the letter of the Transport Commissioner vide Annexure-B/2.*** *Out of the said list, four drivers have already been appointed and the Transport Commissioner vide letter at Annexure-B/1 have submitted the list of rest of the drivers for regularisation of their services.* ***However, no action has yet been taken. Since similarly situated drivers out of the list submitted vide Annexure-B/2 have already been regularised vide Letter at Annexure-7, the applicant's claim for regularisation cannot be denied****.*

Accordingly, the O.A. is allowed and the respondent authorities are directed to regularize the services of the applicant as recommended vide Letter dated 06.08.2016 as at Annexure-B/1, as has been done in the case of similarly situated drivers vide letter at Annexure-B/2. *Such action be taken as expeditiously as possible but within a period of three months from the date of receipt of a copy of this order. With these orders the O.A. is disposed of."*

6.2. *Vide* Letter No.IX-29/2016— 16925/TC, dated 31.10.2016, the Under Secretary in the Office of Transport Commissioner-*cum*-Chairman, State

Transport Authority, Odisha, Cuttack, the case of the appellant along with others has been recommended for regularisation in service. The text of said letter is reproduced hereunder:

*"****

Sub.: Regularization of services of Drivers on contractual basis.

Ref.: Commerce and Transport (Transport) Department letter No.7331/T dated 19.10.2016, this office letter No.2648/TC dated 20.02.2016 and 12133/TC dated 06.08.2016.

Sir,

In inviting reference to the letter on the subject cited above, I am directed to say that details of contractual drivers engaged in STA and its sub-ordinate offices is given below:

1. *14 numbers of drivers have been engaged in STA and its sub-ordinate offices as per concurrence of Finance Department which was intimated to this office vide Commerce and Transport (Transport) Department Letter No.3554/T dated 25.04.2008 on contractual basis.*

2. *The Odisha Gazette dated 16.01.2014 says that contractual appointment/engagements must have been made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts. Although the regular posts have not been abolished, the*

contractual engagement has been allowed within the sanctioned strength of the posts of driver. In other words no engagement has been made beyond the sanctioned strength.

3. *Recruitment procedure prescribed has been followed while giving contractual engagement to the drivers.*

4. *Principle of reservation of posts has been observed properly.*

In this connection, statement showing details of contractual drivers is enclosed herewith.

It is therefore requested that necessary steps may kindly be taken for placement of the case before the high power committee as stipulated in G.A. Department Resolution No.1066, dated 16.01.2014."

6.3. Meticulous reading of said Order dated 12.01.2018 transpires that the reasons put forth by the HPC in its Meeting dated 10.10.2018 (Annexure-B/3 of the counter affidavit) was before the learned Odisha Administrative Tribunal. After considering all these aspects, the same were duly considered and the learned Tribunal has rendered positive direction *"to regularise the services of the applicant as recommended vide Letter dated 06.08.2016"*.

6.4. No substance is placed on record that such finding of fact including the conclusion and direction of the learned Odisha Administrative Tribunal has been upturned in the higher Court(s).

6.5. Therefore, the HPC fell in grave error in reconsidering the factual merit of entitlement of the appellant for regularisation in service. The HPC in order to say that the claim of the appellant does not fulfil conditions laid down in the GAD Resolution, 2014, it has reconsidered the merits which had already been addressed to by the learned Odisha Administrative Tribunal. Nothing is placed by the respondents to demonstrate that said order of the learned Odisha Administrative Tribunal containing positive direction was questioned before higher Court(s).

6.6. It is trite that the decision of the Tribunal is binding on the State-functionaries and authorities, until and unless the same is quashed/reversed/modified by this Court or the Hon'ble Supreme Court. It is propounded in *Ujjam Bai Vrs. State of Uttar Pradesh, AIR 1962 SC 1621 = (1963) 1 SCR 778* that:

"It is necessary first to clarify the concept of jurisdiction. Jurisdiction means authority to decide. ***Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact.*** *The*

question, whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable at the commencement, not at the conclusion, of the inquiry."

6.7. In *Tobacco Manufacturers (India) Ltd. Vrs. Commissioner of Sales Tax, Bihar, (1961) 2 SCR 106,* it has been held as follows:

"The principal point that Mr. Chatterjee, learned counsel for the appellants, argued before us related to the duty of the tax authorities to obey the orders of the Board of Revenue and give effect to them, and he submitted that the High Court erred in denying his clients the relief of mandamus on the ground that that order was erroneous. In support of this argument learned counsel sought reliance on a recent decision of this Court in Bhopal Sugar Industries Vrs. Commissioner of Income-tax, Civil Appeal 407 of 1956; since reported at (1960) 40 ITR 618 in which it was held that ***when an order was made by a superior tribunal (in that case the Income-tax Appellate Tribunal) directing the Income-tax Officer to compute the income of an assessee on a particular basis and that order had become final, the subordinate officer had no right to disregard the direction, because it was wrong and that the High Court when approached by the assessee for the issue of a writ of mandamus, was bound to enforce the final order of the superior tribunal and could not refuse to do so because it considered the order of the tribunal to be wrong. This Court pointed out that when the order which the tribunal had jurisdiction to pass became final, it bound all***

parties to it and its correctness could not be challenged collaterally in proceedings for enforcing that order. *The attempt of learned counsel for the appellants was to bring this case within the scope of the above ruling.*

The ratio of this decision is to be found in this passage:

'By that order the respondent virtually refused to carry out the directions which a superior tribunal had given to him in exercise of its appellate powers in respect of an order of assessment made by him. Such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hirearchy of courts. ***If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice*** *and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly condemning the respondent for refusing to carry out the directions of the superior tribunal, yet held that no manifest injustice resulted from such refusal.'*

To attract the principle thus enunciated, it is necessary that ***there should be an order of a superior tribunal clear, certain and definite in its terms, and without any ambiguity, to which the subordinate authority or officer to whom it is addressed, could give effect."***

6.8. In *Godrej Sara Lee Ltd. Vrs. The Excise and Taxation Officer-cum-Assessing Authority, (2023) 3 SCR 871* it has been laid down that:

"In our view, the Revisional Authority might have been justified in exercising suo motu power to revise the order of the Assessing Authority had the decision of the Tribunal been set aside or its operation stayed by a competent Court. ***So long it is not disputed that the Tribunal's decision, having regard to the framework of classification of products/tax liability then existing, continues to remain operative and such framework too continues to remain operative when the impugned revisional orders were made, the Revisional Authority was left with no other choice but to follow the decision of the Tribunal without any reservation.*** *Unless the discipline of adhering to decisions made by the higher authorities is maintained, there would be utter chaos in administration of tax laws apart from undue harassment to assessees. We share the view expressed in Union of India and Ors. Vs. Kamlakshi Finance Corporation Ltd. 1992 SUPP (1) SCC 443 = AIR 1992 SC 711."*

6.9. A Division Bench of this Court in the case of *Orissa Forest Corporation Ltd. Vrs. Assistant Collector, 1982 SCC OnLine Ori 209* held as follows:

"We do not think this should be the attitude of the Union Government. The demand is under the Statute and the statutory appellate authority, on the set of facts which are common both to the period when relief was granted and the period for which the impugned demand has been made, has already determined that no levy is exigible. As long as the appellate order stands, it must be duly respected and only when the revisional authority vacates the order and holds that the decision of the appellate authority is wrong and the demand was justified, no

demand should be raised. ***It has been indicated on more than one occasions by the Supreme Court with reference to directions of the Appellate Tribunal under the Income Tax Act that such directions are binding and decisions rendered by appellate authorities should be respected by the subordinate revenue authorities and no attempt should be made to wriggle out of the binding decisions of higher authorities as long as they remain in force. The same principle should be applied to the present set of facts*** *and we are, therefore, inclined to take the view that the demand under Annexure-4 should be set aside but we would make it clear that in the event of the appellate orders being vacated, under the Statute the liability would revive and notwithstanding our quashing Annexure-4 the statutory authority would be entitled to raise a demand in terms of the decision which may be ultimately sustained under the Statute."*

6.10. At this stage it is reminded of that, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. [See, *Shrilekha Vidyarthi (Kumari) Vrs. State of U.P., (1991) 1 SCC 212*].

6.11. Any order passed by the Odisha Administrative Tribunal, constituted under the provisions of the Administrative Tribunals Act, 1985[4], ought to be respected and fully

[4] Long title of the Administrative Tribunals Act, 1985, runs thus:
"An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of

complied with, inasmuch as the hierarchy in the judiciary needs to be respected by one and all. In that hierarchy, the orders passed by the learned Odisha Administrative Tribunal would bind the parties before it. [Regard being had to observations made in *Order dated 15.05.2024* of the Supreme Court of India passed in the case of *Ireo Grace Realtech Pvt. Ltd. Vrs. Sanjay Gopinath, C.A. Nos. 2764-2771 of 2022.*]

6.12. In the aforesaid premise, it is not for the HPC to reconsider the merit of the matter to adjudicate afresh the entitlement of the appellant contrary to what had already been observed and held in the Order dated 12.01.2018 passed in O.A. No.1234 of 2016 by the learned Odisha Administrative Tribunal. The tenor of direction of the learned Odisha Administrative Tribunal was loud and clear whereby it has unambiguously directed to regularize the service of the appellant without granting any scope to the HPC to sit over the findings which was adjudicated by the learned Tribunal in its decision. Approving the decision of HPC would clearly tantamount to violation of rule of law.

6.13. The learned Single Judge in his Judgment dated 17.12.2024 manifestly committed error of law in ignoring

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persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto."

to take cognizance of aforesaid factor despite the appellant agitated in the writ petition.

7. A close scrutiny of the impugned Judgment would reveal that in order to uphold the denial of regularisation in service by the High Power Committee, the learned Single Judge has assigned the reason that the appellant has not met mandatory eligibility criteria outlined in GAD Resolution, 2014.

7.1. The essentials criteria can be culled out from the General Administration and Public Grievance Department Resolutions, which were considered by the Odisha Administrative Tribunal in the earlier round of litigation:

"GAD-SC-RULES-0009-2013—26108/Gen
Government of Odisha
General Administration Department
***
RESOLUTION
Bhubaneswar dated the 17th September, 2013.

SUB: Regular appointment of existing contractual Group C and Group D employees who are not holding any post in contravention of any statutory Recruitment Rules made under the proviso to Article 309 of the Constitution of India or any executive instruction in absence of such rules.

The policy regarding regular appointment of following categories of contractual Group 'C' and Group 'D'

employees appointed under the State Government was under active consideration of Government for some time past. Contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new offices or for strengthening of the existing offices/services, following the recruitment procedure prescribed for the corresponding regular posts and the principle of reservation of Posts and services for different categories of persons decided by the state Government from time to time.

Government after careful consideration and in supersession of the Resolutions/Orders/Instructions issued by different Departments of Government to that effect; except as respects things done or omitted to be done before such supersession, have been pleased to decide as follows:

1. Regular Appointment.—

(1) A gradation list of such contractual employees shall be prepared by the Appointing Authority on the basis of their date of appointment. In case, the dates of appointment of two or more employees are the same their inter-se position may be decided on the basis of their date of birth, taking the elder as senior.

(2) Regular appointment of the above categories of contractual employees shall be made on the date of completion of six years of service or from the date of publication of this Resolution, whichever is later, in

the order in which their names appear in the gradation list prepared under para 1. The period of six years shall be counted from the date of contractual appointment prior to publication of this Resolution.

(3) Consequent upon regular appointment under the contractual post, if any, shall get re-converted to regular sanctioned post.

(4) In case the person concerned has crossed the upper age limit for entry into Government service on the date of contractual appointment for the corresponding regular post, the appointing authority shall allow relaxation of upper age limit.

2. Conditions of Service on Regular Appointment.—

(1) Regular Appointments:

On the date of satisfactory completion of six years of contractual service or from the date of publication of this Resolution, whichever is later, they shall be deemed to have been regularly appointed. A formal order of regular appointment shall be issued by the appointing authority.

(2) Pay and other benefits:

On regular appointment they shall be entitled to draw the time scale of pay plus Grade Pay with DA and other allowances as admissible in the corresponding pay band.

(3) Other conditions of service:

(a) *The other conditions of service shall be such as has been provided in the relevant recruitment rules.*

(b) *The conditions of service in regard to matters not covered by this Resolution shall be the same as are or as may from time to time be prescribed by the State Government.*

3. *Interpretation.—*

If any question arises relating to the interpretation of this Resolution, it shall be referred to the State Government whose decision thereon shall be final.

4. *This has been concurred in by Finance Department and Law Department vide their UOR No.2909-ACSF, Dated 09.07.2013 and UOR No.1687/L., Dated 19.07.2013 respectively.*

ORDER: *Ordered that the Resolution be published in the extraordinary issue of the Odisha Gazette. Ordered also that copies of the Resolution be forwarded to all Departments of Government / all Heads of Departments/all Collectors / Registrar, Odisha High Court / Registrar, Odisha Administrative Tribunal Special Secretary, Odisha Public Service Commission / Secretary, Odisha Staff Selection Commission/ Secretary, Odisha Sub-ordinate Staff Selection Commission, Bhubaneswar.*

By Order of the Governor
NITEN CHANDRA
Special Secretary to Government"

*** *** ***

[No. 1066-GAD-SC-RULES-0009/2013/Gen.]
General Administration Department
RESOLUTION

The 16th January, 2014

Sub: ***Regular Appointment of existing Contractual Group C and Group-D employees*** *who are not holding any post in contravention of any statutory Recruitment Rules made under the proviso to Article 309 of the Constitution of India or any executive instruction in absence of such rules.*

1. *As per General Administration Department Resolution No. 26108/Gen., Dated the 17th September, 2013, the following are the mandatory eligibility conditionalities for regularlzation of contractual appointees/engagements.*

   (i) Contractual appointments/engagements must have been made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new offices or for strengthening of the existing offices/services,

   (ii) ***Such Contractual appointments/ engagements must have been made following the recruitment procedure prescribed for the corresponding regular posts****, and*

(iii) *Principle of reservation of Posts must have been followed in case of such Contractual appointments/engagements.*

In other words, no contractual appointee shall be eligible for regular appointment as per the aforesaid Resolution unless the mandatory eligibility conditionalities described above are fulfilled.

2. *A part from the contractual employees fulfilling the conditionalities elucidated in Para. 1 above, there are other categories of contractual employees engaged with or without creation of posts with the concurrence of Finance Department, without following the relevant recruitment and reservation Rules. There are also contractual employees engaged on out sourcing basis through service providing agencies. These contractual employees are not eligible for regularization as per the aforesaid Resolution.*

3. *In order to prevent misuse of the aforesaid Resolution, it is felt necessary to put appropriate mechanism in place to ensure that the necessary conditionalities as mentioned in Para. 1 are met.*

4. *Government, therefore, after careful consideration have been pleased to decide in the following manner.*

(a) *Proposal for regularization of contractual appointees/engagements as per the aforesaid Resolution shall be considered and approved by a HPC to be constituted under the Chairmanship of the Secretary of the relevant*

Department in which the concerned Head of Department and FA/AFA of the Department shall be Members.

(b) In case the matter pertains to Administrative Department, then the High Power Committee shall be constituted under the Chairmanship of the Secretary of the Department with Special Secretary/Additional Secretary in-charge of the office establishment and FA/AFA of the Department as Members.

(c) While considering the cases of regularization, High Power Committee shall at the outset ensure that the concerned appointments fulfil the mandatory eligibility conditionalities as elucidated in Para. 1 above and thereafter consider the case on the basis of the stipulations contained under the heading 'Regular Appointments' of the General Administration Department Resolution No.26108/Gen, Dated the 17th September, 2013.

5. This Resolution has been issued with the advice of Finance Department communicated to General Administration Department vide their DOR No.5660-ACSF, dated the 19th December, 2013.

Order: Ordered that the Resolution be published In the Extraordinary Issue of the Odisha Gazette. Ordered also that copies of the Resolution be forwarded to all departments of Government/ all Heads of Departments/all Collectors/ Registrar, Odisha High Court/Registrar, Odisha Administrative Tribunal/Special

Secretary, Odisha Public Service Commission/Secretary. Odisha Staff Selection Commission/Secretary, Odisha Sub-ordinate Staff Selection Commission. Bhubaneswar.

By Order of the Governor

NITEN CHANDRA

Special Secretary to Government"

7.2. Going through said Resolutions, particularly GAD Resolution, 2014, it is made to understand that Contractual Appointment must have been made against contractual posts created with concurrence of Finance Department on abolition of the corresponding regular posts or contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new offices or for strengthening of the existing offices/services. At this juncture if the Office Order dated 11.06.2009 (Annexure-5) is glanced, it is depicted that due to shortage of regular Drivers, the office vehicles being kept idle in certain offices, concerned Regional Transport Officers, Deputy Commission of Transport (North Zone), Sambalpur and Principal, Driving Training School, Bhubaneswar were authorised "to engage Contractual Driver with condition to renew every year by the Finance Department Order No.Bt-V-47/04-55764-F., dated 31.12.2004 communicated *vide* Commerce and Transport (Transport) Department Letter No.1913-T.,

dated 10.02.2005". In the said letter it has been stipulated that the appointment shall be made with strict adherence with the terms and conditions imposed by Finance Department. Therefore, the HPC having held otherwise without assigning cogent reason, the engagement/appointment of Contractual Drivers could not be said to be *de hors* record and material available on record. So far as concurrence of the Finance Department is concerned, this aspect has been considered by the Odisha Administrative Tribunal in its Order dated 12.01.2018 passed in O.A. No.1234 of 2016 in connection with the appellant's case, wherein it has been mentioned that *"Thereafter, he was engaged as a Contractual Driver vide Order at Annexure-4 and 4/1.* ***While the matter stood thus, Government in Finance Department vide their letter at Annexure-5 approved the proposal for appointment of 14 Contractual Drivers****"*. This Court is, thus, convinced that the appointment of the appellant was made against sanctioned post with necessary concurrence as is made necessary in the said Resolution.

7.3. The next condition as revealed from the GAD Resolution, 2014 is that contractual appointment/engagement must have been made following the recruitment procedure prescribed for corresponding regular posts. This aspect has been dealt with by the Odisha Administrative

Tribunal in its Order dated 12.01.2018 passed in O.A. No.1234 of 2016 in connection with the appellant's case. From the said Order which has been extracted *supra* it is recorded that *"the stand of the State-respondent in the counter is that the applicant has not been appointed following due procedure which contradicts the letter of the Transport Commissioner vide Annexure-B/2"*. Therefore, in the present case, the counter affidavit filed in the writ petition taking contradictory stand by the Transport Department, which aspect has already been decided by the Odisha Administrative Tribunal and remained unchallenged by the respondents in further proceedings.

7.4. In *Kalinga Mining Corpn. Vrs. Union of India, (2013) 5 SCC 252* the principle of *res judicata vis-à-vis* scope to reopen already decided issue in another litigation *inter se* parties has been discussed as follows:

> *"42. Considering the principle of res judicata, this Court in Mohanlal Goenka Vrs. Benoy Kishna Mukherjee, (1952) 2 SCC 648 = AIR 1953 SC 65 = 1953 SCR 377 held as under:*
>
> > *'23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'.'*

This Court also held that:

> *'14. *** A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides.' [See State of W.B. Vrs. Hemant Kumar Bhattacharjee, AIR 1966 SC 1061]*

43. In view of the aforesaid clear enunciation of the law by this Court, it would appear that even if the judgment dated 02.07.2001 [Kalinga Mining Corpn. Vrs. Union of India, AIR 2002 Ori 83] rendered by the High Court in OJC No. 11537 of 1999 and the dismissal [Kalinga Mining Corpn. Vrs. Union of India, SLP (C) No. 13556 of 2001, Order dated 24.08.2001, wherein it was directed: 'The special leave petition is dismissed.'] in limine of SLP (C) No. 13556 of 2001 arising from the aforesaid judgment is considered to be erroneous in view of the judgment in Saligram Khirwal Vrs. Union of India, (2003) 7 SCC 689, the matter regarding the locus standi of the LRs of Respondent 10 to proceed with a mining lease application cannot be permitted to be reopened at this stage since it has become final inter partes."

7.5. Stemming on such principle, there is no doubt in mind that in the present case the HPC could not have reopened the aspects which were discussed and decided by the Odisha Administrative Tribunal *qua* the appellant and the respondents. Therefore, this Court hastens to observe that the reason for denial of claim of the

appellant by the HPC is liable to be rejected inasmuch as there is nothing on record to suggest that the said Order of the learned Tribunal has been questioned before any higher Court(s). Thus, the argument of the Additional Government Advocate as well as the Standing Counsel for the Transport Department is fallacious and at this stage such aspect cannot be insisted to have a relook.

7.6. This Court now ventures to examine another reason assigned by the HPC to reject the claim for regularisation in service, *viz.,* reservation policy was not followed at the time of engagement/appointment. It is further stipulated in the GAD Resolution, 2014 that principle of reservation of posts must have been followed in case of such contractual appointment/engagement. The question of applicability of reservation policy at the stage of consideration of regularisation in service arose in many cases before this Court.

7.7. In *State of Odisha Vrs. Biswamitra Parida, W.A. No.822 of 2020, vide Order dated 10.02.2021* [5] it has been observed by this Court as follows:

"In view of the Resolution dated 17.09.2013, since the respondents have already completed the required years of continuous service/engagement and posts were created

[5] The view of Division Bench has been referred to and followed in *Brajendra Kumar Jena Vrs. State of Odisha, 2024 ILR-CUT-ONLINE-785 (Single Bench).* Visiting the webportal reveals that no writ appeal against said judgment has been preferred by the State of Odisha.

pursuant to the direction of the learned Court, ***the appellants-opposite parties should not have engaged the respondents on contractual basis****. Therefore, the appellants opposite parties should regularize the service of the respondents in accordance with the Resolution dated 17.09.2013 of the General Administration Department.*

Considering the above facts, it is not disputed that similar questions on principles of ORV Act which were not followed earlier, series of writ petitions were disposed of which were confirmed by the Apex Court in SLP No.18642 of 2018 dated 06.08.2018 in the case of State of Odisha & Anr. Versus Jatin Kumar Das which arises out of Original Application No.2172(C) of 2015 and batch of cases. ***In the said Original Application, the learned Tribunal has already dealt with the said issue having not followed the Rules of the ORV Act at paragraph-8 of the judgment dated 17.05.2017*** *and Original Applications were disposed of by the Tribunal wherein the following specific finding was given:*

*'****the ORV Posts and Services Act, 1975 has no application to the posts to be filled up through contract in terms of Section-3(d) of the said Act. The respondents failed to produce any paper indicating the amendment of Section 3(d) of ORV Act, 1975 so also they could not able to produce the documents that there was any other statutory and mandatory provision overriding section 3(d) referred to above for application of the reservation principle while issuing contractual engagement/appointment in favour of the applicants during the year 2005.****'*

However, pursuant to the direction of this Court to take instruction, learned Additional Government Advocate

submitted that the Resolution dated 17.09.2013 passed by the General Administration Department for regularization of the DLR, daily wages employees shall be applicable in the case of present respondents.

In view of the above facts, all the writ petitions were disposed of confirming the order of Tribunal and the said orders of the writ petitions were confirmed by the apex Court in Special Leave Petition on the same issue. Rightly the learned Single Judge has directed the appellants-State authorities to regularize services of the Respondents petitioner in terms of the above facts and circumstances narrated in the above paragraphs. Therefore, we are not inclined to interfere with the impugned order dated 03.09.2020 passed by the learned Single Judge in W.P.(C) No.22112 of 2020. Accordingly, the Writ Appeal is dismissed."

Said matter was carried to the Hon'ble Supreme Court in S.L.P.(C) No.6851 of 2021 [*State of Odisha Vrs. Biswamitra Parida*] wherein the following Order was passed on 30.06.2021:

" We are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.

2 The Special Leave Petitions are accordingly dismissed.

3 Pending application, if any, stands disposed of."

In this regard it may be worthy to say that so far as engagement of employees holding contractual posts are concerned the provisions of the Odisha Reservation of

Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 ("ORV Act", for brevity) have got no application, as held by a Division Bench of this Court *vide Order dated 10.05.2018* passed in the matter of *State of Odisha Vrs. Jatin Kumar Das, W.P.(C) No.6661 of 2018*[6], which pertains to regularisation in service of Data Entry Operators engaged on contractual basis in the Commercial Tax Organization. Following observation made by the Division Bench of this Court in Order dated 10.05.2018 in *State of Odisha Vrs. Jatin Kumar Das, W.P.(C) No.6661 of 2018* is noteworthy:

> *"2. This writ petition has been filed by the functionaries of the State assailing the correctness and legality of the common order dated 17.05.2017 passed by Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No.2172(C) of 2015 along with similar batch of Original Applications, wherein the respondent-State Government was directed to issue formal order of regular appointment in favour of the applicants therein, who were initially engaged in 2005 as Data Entry Operators and Junior Programmers engaged in IT Organization on outsourcing basis and thereafter with effect from 17.09.2013, on annual contract basis directly by the*

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[6] In *State of Odisha Vrs. Jatin Kumar Das, S.L.P.(C) No. 18642 of 2018 [Arising out of impugned final judgment and order dated 10.05.2018 in W.P.(C) No.6661 of 2018 passed by the High Court Of Orissa at Cuttack]* the Hon'ble Supreme Court of India has been pleased to pass the following Order on 06.08.2018:
"No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.
The special leave petition is accordingly dismissed. Pending application, if any, stands disposed of."

Commercial Taxes Department, with all consequential service and financial benefits.

3. *Narrating the admitted factual scenario, i.e., engagement of IT personnel on outsourcing basis thereafter on direct contractual basis by the Commercial Taxes Organization Mr. Sahu, learned Additional Government Advocate assails the impugned order on the ground that the direction for regular appointment of those IT personnel* ***violates the Government of Odisha in G.A. Department Resolution dated 17.09.2013*** *fixing certain mandatory norms for regularization of contractual appointees.* ***Secondly****, 2 persons whose initial appointment was on outsourcing basis, cannot come under the regular establishment because* ***no open and transparent recruitment procedure has been adopted****.* ***Thirdly****,* ***provisions of ORV Act has not been followed while appointing them on outsourcing and direct contractual basis****.*

4. *Learned Tribunal, taking into consideration the facts and circumstances of the case as well as submissions of learned counsel for the parties, has arrived at the aforesaid conclusion, which is clear, cogent and well-reasoned, which hardly requires any interference under writ jurisdiction.* ***Therefore, we are in agreement with the reasons assigned and findings arrived at by learned Tribunal in directing for regular appointment of the contractual employees in question, including the opposite party No.1 herein****.*

However, while parting with the order, we may note that whatever may be the mode of engagement/ appointment, there is concurrence of the Finance

Department and the employees in question were engaged in different Departments of the Government and rendered their services uninterruptedly. Besides that, mode of engagement adopted and selection process followed was consciously adopted and law prevalent at the relevant time for engagement of contractual employees was scrupulously followed under the aegis of Government functionaries. ***But, surprisingly, after utilizing their services for more than a decade, when question of bringing them under regular establishment arises, they (employees) are pushed to a corner. Government functionaries in a welfare State should refrain from adopting hire and fire policy. The action taken amounts to gambling with the career of the employees, some of whom might have been overaged to compete for employment.****"*

7.8. At this juncture this Court feels it apposite to examine the provisions of the ORV Act and applicability thereof to the fact-situation of the present case. Even if it is assumed that the appellant was not appointed by following the provisions of the ORV Act during the course of selection procedure, the provisions of the Act being not applicable to the engagees on contract basis prior to introduction of sub-section (2) to Section 3 for the purpose of regularisation in service. The letter of appointment of the Appointing Authority clearly spells out that the appellant has been engaged as Contractual Driver. For that the State Government has introduced

amendment to Section 3[7] thereof by virtue of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Ordinance, 2023 [published in Odisha Gazette, Extraordinary No.1996, dated 19.08.2023], which has been given effect to "at once". Later said Ordinance has been promulgated as the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 [published in Odisha Gazette, Extraordinary No.2543, dated

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[7] Section 3 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, after insertion of sub-section (2) would read thus:

"3. Applicability.—

(1) This Act shall apply to all appointments to the Posts and Services under the State except—

(a) Class-I posts which are above the lowest rung thereof and meant for conducting or guiding or directing Scientific and Technical research;

(b) Class-I Posts which are above the lowest rung thereof and classified as scientific posts;

(c) tenure posts;

(d) those filled up on the basis of any contract;

(e) ex-cadre posts;

(f) those which are filled up by transfer within the cadre or on deputation;

(g) the appointment of such staff the duration of whose appointment does not extend, beyond the term of office of the person making the appointment and the work charged staff which are required for emergencies like flood relief work, accident restoration and relief etc.;

(h) temporary appointments of less than forty-five days duration;

(h-I) those which are required to be filled up by appointment of persons under the rehabilitation assistance given to the members of the family of the deceased or permanent disabled employees who suffer from the disability while in service;

(i) those in respect of which recruitment is made in accordance with any provision contained in the Constitution.

(j) Schematic posts.

(2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or ***contractual posts*** *or schematic posts which are to be* ***regularized against the sanctioned posts****."*

07.11.2023], which came into force with effect from 19.08.2023[8]. Sub-section (2) of Section 3 as inserted by virtue of said amendment does not admit of any ambiguity. Said amendment specifies the effective date for its enforcement as 19.08.2023 (prospective amendment). This is clearly indicative that prior to said date the provisions introduced by way of amendment to the ORV Act, 1975, had no application to contractual engagements for consideration of regularisation against the sanctioned posts.

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[8] The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 (Odisha Act 10 of 2023) stands as follows:

[Be it encacted by the Legislature of the State of Odisha in the Seventy- fourth Year of the Republic of India, as follows:

1. Short title and commencement.—

(1) This Act may be called the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023.

(2) It shall be deemed to have come into force on the 19th day of August, 2023.

2. Amendment of Section 3.—

In the Odisha Reservation of Vacancies In Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 [Odisha Act No. 38 of 1975], Section 3 shall be re-numbered as sub-section (1) thereof and in sub-section (1) as so re-numbered, —

(i) after clause (i), the following clause shall be inserted, namely:

"(j) Schematic Posts."

(ii) after sub-section (1) so re-numbered, the following sub-section shall be inserted, namely:

"(2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or contractual posts or Schematic posts which are to be regularised against the sanctioned posts."

3. Repeal and Savings.—

(1) The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Schedule Tribes) Amendment Ordinance, 2023 [Odisha Ordinance No.3 of 2023] is hereby repealed.

(2) Notwithstanding the repeal under sub-section (1), anything done or any action taken under the said Ordinance so repealed shall be deemed to have been done or taken under this Act.]

It may be stated that recourse to a subsequent legislation is permissible if there exists any ambiguity in the earlier legislation for the purpose of ascertaining as to whether by a subsequent legislation proper interpretation has been fixed which is to be put upon the earlier Act. *[Mahim Patram Private Ltd. Vrs. Union of India, 2007 (3) SCC 668]*. Glaringly, in the present context, the case of the appellant emanated prior to the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 came into force. Before said amendment Act, 2023 came into effect, the appellant had already been eligible for consideration of regularization in service and the Odisha Administrative Tribunal disposed of the Original Application of the appellant prior to the amendment Act, 2023 came to operate.

In such conspectus of the matter, the ground for rejection of claim of the appellant by the HPC as upheld in the impugned Judgment dated 17.12.2024 that the provisions of the ORV Act was not followed seems to be based on incorrect appreciation of legal impact on the fact-situation obtained on record.

7.9. Under such delineated precinct, this Court is of the considered view that the learned Single Judge has not dealt with the issue by considering the legal perspective.

Legal perspective of necessity for consideration of regularisation in service with regard to engagees having worked for substantial number of years and cases of irregular engagement:

8. Legal position with respect to regularisation in service on having worked for substantial number of years has been spelt out in very many cases.

8.1. Reference can be had to *Union of India Vrs. Subhankari Das, 2023 (III) ILR-CUT 979,* wherein it has been stated that,

> *"5. Having heard learned counsel for the parties and after going through the records, it is admitted that the opposite parties are discharging their duties and responsibilities from the date of their initial appointment in the year 1995 and 2002. In the year 2017, their designations were changed without any change of remuneration. Without regularising their services, the authorities issued a circular on 15.02.2018, which is absolutely a camouflaged way of approach to the difficulties of the opposite parties to deprive them of the benefit of their regularisation after utilising their services from 1995 and 2002, i.e., for more than 23 years and 16 years by then.*
>
> *6. The reliance was placed by the present petitioners before the Tribunal on the cases of State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1; Government of Tamil Nadu Vrs. Tamil Nadu Makkal Nala Paniyalargal, 2023 SCC OnLine SC 393 and Vibhuti Shankar Pandey Vrs. State of Madhya*

Pradesh, 2023 LiveLaw (SC) 91 and submission was made that there was no sanctioned post available for engagement of the opposite parties and that the process of engagement of the opposite parties was not in accordance with Article 14 of the Constitution of India. Therefore, the opposite parties have no right for regularisation.

7. *The above stand of the petitioners cannot have any application to the case of the present opposite parties, as because, in a case of similarly situated persons, i.e. Basanta Kumar Sahoo Vrs. Union of India, W.P.(C) No.24759 of 2012, disposed of on 31.07.2017, relying on the decisions rendered in Umadevi (3), (2006) 4 SCC 1 and State of Karnataka Vrs. M.L. Keshari, 2010 (II) OLR (SC) 932 = (2010) 9 SCC 247, direction was issued for regularisation of such employees. Similarly, in the case of Manoj Kumar Jena Vrs. Union of India, W.P.(C) No. 24758 of 2012, disposed of 31.07.2017, this Court also took the similar view as was taken in the case of Basanta Kumar Sahoo (supra). The order passed in the case of Manoj Kumar Jena (supra) was assailed by the authorities before the Apex Court in S.L.P. No.35963 of 2017, which was dismissed vide order dated 05.01.2018. Thereby, the order passed by this Court in Manoj Kumar Jena (supra) got affirmed in the apex Court. Here, it is worth mentioning that in both the cases indicted above, i.e. in the case of Basanta Kumar Sahoo and Manoj Kumar Jena (supra), the orders have been passed by one of us (Dr. B.R. Sarangi, ACJ). The said order having been affirmed by the apex Court, as a consequence thereof, the same has been implemented. The decision of Basanta Kumar Sahoo (supra) was*

referred to by the High Court of Delhi in the case of Amrish Kumar Vrs. Indian Institute of Mass Communication, W.P.(C) No.5906 of 2018 & CM Appl No.23016 of 2018, disposed of on 14.02.2020 [2020 SCC OnLine Del 1915].

8. *In Amrish Kumar (supra), the High Court of Delhi observed as follows:*

'In the present case too, the workmen admittedly have been working for 23 years. It clearly tantamount to unfair labour practice by denying them the benefits of regular services for 23 years. The objective of the Act is to prevent unfair labour practice which is defined in detail in 5th Schedule of the Industrial Disputes Act, 1947 with reference to Section 2A. The specific definition applicable to the present case is clause 10 which reads as under:

'10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.'

The facts of the instant case as discussed hereinabove clearly shows that keeping the workmen in uninterrupted service for 23 years as casual workmen and denying them the status and privilege of permanent workmen, constitutes unfair labour practice which is illegal and needs to be quashed. Furthermore, similarly situated workmen of the respondent who worked in its other administrative unit in Orissa (Dhenkanal), for roughly half a century on ad hoc basis, have been directed by the Orissa High Court in Basanta Kumar Sahoo Vrs. Union of India, W.P.(C) No.24759 of

2012, decided on 31.07.2017 to be regularized. The said judgment has referred to and relied upon Umadevi (supra) and State of Karnataka Vrs. M.L. Kesari (2010) 9 SCC 247. The SLP against the said judgment of the Orissa High Court was dismissed by the Supreme Court on 05.01.2018; therefore, it has attained finality. The case of the present petitioners is identical. That being the position i.e. they had worked for almost 23 years; the employer was same; they had been working against the sanctioned posts; they were not considered as regular employees, therefore, the treatment meted out to them constitutes unfair labour practice. In the circumstances, their services too shall be regularized from initial date of joining, with all consequential benefits.

9. *It is pertinent to mention here that the decision rendered by the High Court of Delhi in Amrish Kumar (supra) was challenged before the apex Court in Special Leave to Appeal (C) No. 710 of 2021, which was dismissed vide order dated 10.12.2021 and, as a consequence thereof, the same has also been implemented. Therefore, the Central Administrative Tribunal, relying on the said judgment, having passed the order impugned, this Court is not inclined to interfere with the same. As such, the order passed by the Central Administrative Tribunal dated 13.07.2023 in O.A. No. 260/00/163 of 2018 is hereby confirmed and* ***the petitioners are directed to regularise the service of the opposite parties from initial date of their joining with all consequential benefits within a period of sixty days from the date of receipt of the order****."*

8.2. In view of *State of Jammu and Kashmir Vrs. District Bar Association, Bandipora, MANU/SC/1566/2016 = (2017) 3 SCC 410; and Amarendra Kumar Mohapatra Vrs. State of Odisha, (2014) 4 SCC 583 = AIR 2014 SC 1716* wherein it has been clearly laid down that in order to ascertain whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by *vice* of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment. It has already been noticed in *Umadevi's case, (2006) 4 SCC 1*, which was further explained in *State of Karnataka Vrs. M.L. Kesari, (2010) 9 SCC 247*, that the "regularisation" in service can be permissible if the following conditions are fulfilled:

i. The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or Tribunal.

ii. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

8.3. The view of Hon'ble Supreme Court of India expressed in the case of *Jaggo Vrs. Union of India, 2024 SCC OnLine*

SC 3826 = 2024 LiveLaw (SC) 1032, is as follows (extracted from SCC):

"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 Vrs. Union of India, (2024) 1 SCR 1230, 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 [International Labour Organization— Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy] 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 Vrs. Microsoft Corporation, 97 F.3d 1187 (9th Cir. 1996) 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."*

8.4. In the case of *Shripal Vrs. Nagar Nigam, 2025 SCC OnLine SC 221 = 2025 LiveLaw (SC) 153* referring to observations rendered in *Jaggo (supra)*, the Hon'ble

Supreme Court of India has been pleased to clarify that (extracted from SCC):

> *"16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay.* ***Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status.*** *While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.*
>
> *17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements.* ***Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period****.*

18. *The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:*

I. *The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.*

II. *The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.*

III. *Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.*

IV. *The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these long time employees are not indefinitely retained on daily wages contrary to statutory and equitable norms."*

8.5. It is apt to refer to the anxious consideration shown by the Madras High Court in *N. Karunanidhi Vrs. Union of India, W.P. No. 12887 of 2016, vide Judgment dated 22.04.2022* rendered with respect to exploitation of service. The following benevolent observation has been made by said Court in favour of the employees, whose services have been utilized by the Government for a substantial length of time:

"18. If the Courts cannot give direction for their regularisation of service, in the constrained legal scenario what other remedies that are available to these unfortunate employees, who have been

engaged in service for public purpose, without having any definite future to hold on? ***These petitioners cannot be kept on the tenterhooks of their employment for years together, by brushing aside and discarding their concerned yearning for a definite future, with unresponsive indifference****.*

19. ***A welfare State grounded on constitutional values, cannot come up with apathetic and callous stand that despite continued employment of these petitioners for years together, no semblance of right is available to them.*** *Such stand by the State is opposed to constitutional values as enshrined in Article 21 of the Constitution of India. The Courts of course have held that equal opportunity must be provided in public employment and entry through back door should be discountenanced. When Article 21, being violated by the State, action towards its servants, the consideration of the Government must primarily be focussed on alleviating legitimate grievances of its employees. Even assuming that the recruitment of these writ petitioners had not been fully in consonance with the procedure for appointment in Government services, the fact remained that these persons have been consciously appointed by the Government for implementing public projects and the work has been extracted from them continuously for several years. It is therefore, not open to the Government after a period of time to turn around and contend that these writ petitioners have no right at all to seek any kind of guarantee for their future.*

20. ***In the opinion of this Court, continued employment for several years, even on a projects meant to serve the State as a whole, certain rights would definitely accrue to them, atleast to the extent of making a claim for formulation of a scheme/towards their absorption.*** *This Court is quite conscious of the fact that the Government has been benevolent and had come up with several schemes in the past and directed regularisation of services of thousands of employees over a period of time. Such benevolence ought to permeate to the lowest levels to take within its sweep the desperate cry of the petitioners as well. As in the sublime words of the father of nation, Mahatma Gandhi, 'A nation's greatness is measured by how it treats its weakest members'. Merely because these writ petitioners have been employed in the projects, the policy makers may not shut their mind and close their eyes to their precarious plight having to serve public purpose but left in the lurch and unprotected, at the end of the day."*

8.6. In *Sheo Narain Nagar Vrs. State of Uttar Pradesh, (2017) 11 SCR 138,* the Hon'ble Supreme Court recognized such employment on temporary status as on exploitative terms. The pertinent observation made in the said case is quoted hereunder:

"8. ***When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments.*** *We have called for the data in the instant case to ensure as to how many employees*

were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. ***Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms.*** *This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale.* ***That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance.*** *It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, l6 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara Vrs. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc.* ***There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they***

require protection and cannot be dealt with arbitrarily. *The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006.* ***The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise.*** *This kind of action is not permissible, when we consider the pith and substance of true spirit in Umadevi (supra).*

9. *Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002.* ***As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed.*** *Thus, the submission raised by learned counsel for the respondent that posts were not*

available, is belied by their own action. ***Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.***

10. The High Court dismissed the writ application relying on the decision in Umadevi (supra). ***But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment.*** *Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred with effect from 02.10.2002.* ***The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Umadevi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 02.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 02.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today****."*

8.7. It is manifest from record that by now the petitioner-Appellant, being appointed by duly authorized Appointing Authority, has completed more than 10 years of service, which is requisite length of service for

consideration of regularization in service as per *Umadevi (3), (2006) 4 SCC 1* [although the Government of Odisha has accepted six years of satisfactory service for regularization in terms of Resolution dated 17.09.2013 read with Resolution dated 16.01.2014] and the authorities of the Regional Transport Officer employed the petitioner-Appellant and extended his terms in service voluntarily and continuously for more than ten years.

8.8. It is trite that where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But in the instant case, as there is no complaint with respect to possession of the prescribed qualifications and the appellant has been working against sanctioned post on being selected by undergoing the process of selection, such appointment could neither be said to be illegal nor irregular.

8.9. Noteworthy to refer to the *Order dated 06.12.2021 passed in W.A. No.231 of 2016 [Vice Chairman, State Council for Technical Education & Vocational Training, Odisha Vrs. Braja K. Mohanty]* and batch, wherein it has been observed as follows:

"In each of these appeals, the respondent has worked as contractual watchman for over ten years. It is also stated in the counter affidavit filed in the writ petition in paragraph 13 by the present appellants that there were in fact five vacancies in sanctioned posts of watchman. The only distinction sought to be made is that for benefiting by the decision in Secretary, State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1, their appointments had to be merely 'irregular' and not 'illegal'. The fact remains that the respondents have been working continuously as watchmen. It is not the case of the appellant that they are not qualified to be employed as watchman. ***Given the fact that the respondents have worked as watchmen on contract basis for over ten years, it is obvious that the appellant requires their services.*** *In the circumstances, this Court is not inclined to interfere with the impugned order of the learned Single Judge requiring the appellants to consider the cases of the respondents for regularization. The appeals are dismissed."*

8.10. Noticing the Judgment of the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and Others Vrs. Umadevi (3), (2006) 4 SCC 1*, in *Niranjan Nayak Vrs. State of Odisha & Others, 2023 (I) OLR 407* the observation of this Court runs as follows:

"12. Similarly, in the case of Amarendra Kumar Mahapatra and Others Vrs. State of Odisha and Others, (2014) 4 SCC 583 = AIR 2014 SC 1716, the Supreme Court was of the opinion that the appellants were entitled to regularization in service having regard to the fact that they have rendered long years of service on ad hoc basis.

13. *In the case at hand, it can be ascertained* ***that the petitioner was appointed against a substantive vacant post and he had been discharging his duties in the said post since 1993****. The appointment was made on an ad hoc basis and was extended from time to time. Since the petitioner was appointed against substantive vacancy and the post was sanctioned by higher authorities, the petitioner should have been extended the benefit of regulatisation like other similarly situated persons."*

8.11. In the case at hand there is nothing placed on record except contemplation of the HPC to revoke the order of regularisation in service being made in respect of four persons out of fourteen Contractual Drivers. Nevertheless, having not challenged the Order dated 12.01.2018 passed in OA No.1234 of 2016 *(Prafulla Kumar Behera Vrs. State of Odisha)* the respondents allowed the same to attain its finality, and at this belated stage they cannot take the same stand for adjudication afresh which fell for consideration before the learned Odisha Administrative Tribunal. Reading of counter affidavit filed by the Under Secretary on behalf of STA in W.P.(C) No.2157 of 2020 *(Krodapati Saraf Vrs. State of Odisha)* the contentions and grounds justifying rejection of claim of the appellant appears to be contrary to what is reflected in the letter of recommendation *vide* No.IX-29/2016— 16925/TC, dated 31.10.2016 of Under-Secretary, STA, Odisha, Cuttack and observations and

directions contained in Order dated 12.01.2018 passed in O.A. No.1234 of 2016 by the Odisha Administrative Tribunal, and thereby, such a course adopted by the respondents is hit by the principles of estoppel on the anvil of proposition of law laid down in *Bikash Mahalik Vrs. State of Odisha, 2022 (I) ILR-CUT 108.*

8.12. In such view of the matter, this Court cannot countenance the reasons assigned by the learned Single Judge to uphold the denial of the regularisation in service of the appellant by the HPC. There was no occasion for the HPC to consider the same grounds which had already been addressed to and decided by referring to counter affidavit filed by the respondents before the learned Odisha Administrative Tribunal in O.A. No.1234 of 2016 *(supra)*.

Conclusion:

9. Given the above factual matrix and circumstances coupled with legal perspective, the following norms set forth by the Constitution Bench in *State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1* does require to be adhered to:

> *"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, (1967) 1 SCR 128 = AIR 1967 SC 1071, R.N. Nanjundappa, (1972) 1 SCC 409 = (1972) 2 SCR 799*

and B.N. Nagarajan, (1979) 4 SCC 507 = (1979) 3 SCR 937 and referred to in para 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 the courts or of tribunals.*** *The question of regularisation 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 regularise 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."*

9.1. Culling out above paragraph from *Umadevi (supra),* in the case of *Vinod Kumar Vrs. Union of India, (2024) 1 SCR 1230 = 2024 INSC 332* it has been indicated as follows:

> *"4. The appellants have approached this Court arguing that the High Court erred in its judgment by failing to recognize the substantive nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed for. Furthermore, their promotion by a regularly constituted Departmental Promotional Committee, the selection process they underwent, and the continuous nature of their service for over a quarter of a century underscored their argument for regularization and that the High Court has incorrectly applied the principles from the case of Uma Devi (supra) to their situation.*
>
> ***
>
> *8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status.* ***The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.****"*

9.2. After taking note of judgments rendered in *Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1*, *State of Karnataka Vrs. M.L. Kesari, (2010) 9 SCC 247, &c.* the Hon'ble Supreme Court in the case of *Neelima Srivastava Vrs. State of Uttar Pradesh, (2021) 8 SCR 167 = 2021 SCC OnLine SC 610* observed:

"32. *The Division Bench of the High Court proceeded as if it was hearing an appeal against the judgment dated 23.01.2006 of the learned Single Judge which had already attained finality. Appeal filed under the Rules of the Court was filed against the judgment dated 15.05.2014 rendered in Writ Petition No. 8597 of 2010.* ***It is a well settled principle of law that a Letters Patent Appeal which is in continuation of a Writ Petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an earlier round of litigation ignoring the principles of res-judicata and doctrine of finality.***

33. *By a majority decision in Naresh Shridhar Mirajkar Vrs. State of Maharashtra, AIR 1967 SC 1 has laid down the law in this regard as under:*

'When a Judge deals with matters brought before him for his adjudication, he first decides questions, of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court.

34. *In Rupa Ashok Hurra Vrss. Ashok Hurra & Anr., (1999) 2 SCC 103, while dealing with an identical issue this Court held that reconsideration of the judgment of this Court which has attained finality is not normally permissible. The decision upon a question of law rendered by this Court was conclusive and would bind the Court in subsequent*

cases. The Court cannot sit in appeal against its own judgment.

35. *In Union of India & Ors. Vrs. Major S.P. Sharma & Ors., (2014) 6 SCC 351, a three-judge bench of this Court has held as under:*

'A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be confusion and chaos and the finality of proceedings would cease to have any meaning.'

36. *Thus, it is very well settled that it is not permissible for the parties to re-open the concluded judgments of the Court as the same may not only tantamount to an abuse of the process of the Court but would have far reaching adverse effect on the administration of justice."*

9.3. In *N. Ramachandra Reddy Vrs. State of Telangana, (2019) 11 SCR 792* it has been restated as follows:

"43. Further, in the case of Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, (2016) 3 SCC 340, while considering the scope of the intra-Court appeal, this Court has held that, unless Appellate Bench concludes that findings of the learned Single Judge are perverse, it shall not disturb the same."

9.4. In *Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, (2016) 3 SCC 340* it has been observed as follows:

"Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief."

9.5. In *Wander Ltd. Vrs. Antox India (P) Ltd., 1990 Supp. SCC 727* following is the observation:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the

trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. Vrs. Pothan Joseph, (1960) 3 SCR 713 = AIR 1960 SC 1156: (SCR 721)

*'*** These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. Vrs. Jhanaton,1942 AC 130:*

*'*** the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.' ***'***"*

9.6. In *Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd., Bhubaneswar, 2020 (II) ILR-CUT 398* this Court had the occasion to examine the scope of intra-Court appeal and observed as follows:

*"*** Let us first examine the power of the Division Bench while entertaining a Letters Patent appeal against the judgment/order of the Single Judge. This writ appeal has been nomenclature as an application under Article 4 of the Orissa High Court Order, 1948 read with clause 10 of the Letters Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court Order, 1948. Letters Patent Appeal is an intra-Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. (Ref: (1996) 3 SCC 52, Baddula Lakshmaiah Vrs. Shri Anjaneya Swami Temple). The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge*

of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass. Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only to correct errors, if any made.

In the case of B. Venkatamuni Vrs. C.J. Ayodhya Ram Singh reported in (2006) 13 SCC 449, it is held that in an intra-Court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge. Even a Court of first appeal which is the final Court of appeal on fact may have to exercise some amount of restraint. Similar view was taken in the case of Umabai Vrs. Nilkanth Dhondiba Chavan reported in (2005) 6 SCC 243. In the case of Commissioner of Income Tax Vrs. Karnataka Planters Coffee Curing Work Private Limited reported in (2016) 9 SCC 538, it is held that the jurisdiction of the Division Bench in a writ appeal is primarily one of adjudication of questions of law. Findings of fact recorded concurrently by the authorities under the Act concerned (Income Tax Act) and also in the first round of the writ proceedings by the learned Single Judge are not to be lightly disturbed. Thus a writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and it can be set aside only when there is a patent error on the face of the record or the judgment is against established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single

Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench."

9.7. With such delineated scope laid down with respect to consideration of writ appeal, this Court finds that there is factual perversity as well as legal flaw apparent on the face of Judgment dated 17.12.2024 of the learned Single Bench. Therefore, it is felt expedient to show indulgence in said judgment.

10. For the reasons ascribed *supra* and in the light of discussions made in the foregoing paragraphs and bearing in mind the scope for interference while sitting in intra-Court appeal filed under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent constituting the High Court of Judicature at Patna and Rule 6 of Chapter-III and Rule 2 of Chapter-VIII of the Rules of the High Court of Orissa, 1948, this Court sets aside the Judgment dated 17.12.2024 rendered in W.P.(C) No.2160 of 2020.

11. As a consequence of such order, needless to say that the Order of disengagement of Contractual Drivers, so far as the appellant is concerned, *vide* Letter No.IX-29/2020—658/TC, dated 14.01.2020 (Annexure-1 of writ petition) and Office Order bearing No.13642/TC, dated 24.11.2018 issued from the Office of the Transport Commissioner-*cum*-Chairman, State Transport Authority, Odisha, Cuttack (Annexure-2 of writ petition) declining to regularise services of the appellant on the grounds that "High Power Committee has considered the matter and decided not to regularise services of the applicant as he was not engaged against contractual post created with concurrence of Finance Department and no post of regular Driver was abolished for the purpose and provisions of ORV Act was not followed" stand quashed, being contrary to facts stated in recommendation in the Letter No.IX-29/2016—16925/TC, dated 31.10.2016 of Under-Secretary, STA, Odisha, Cuttack issued from the above said Office of STA as well as the findings, observations and directions contained in Order dated 12.01.2018 passed in O.A. No.1234 of 2016 by the learned Odisha Administrative Tribunal in the case of present appellant, titled *Prafulla Kumar Behera Vrs. State of Odisha*.

11.1. As is *ex facie* manifest from the Counter-Affidavit sworn to by Under Secretary, State Transport Authority, filed

on behalf of the State Transport Authority in the writ petition being W.P.(C) No.2157 of 2020 (which was disposed of *vide* common Judgement dated 17.12.2024), is hit by estoppel, inasmuch as the Order dated 12.01.2018 passed in O.A. No.1234 of 2016 by the learned Odisha Administrative Tribunal attained its finality being not challenged before higher Court(s).

11.2. *Ergo*, it is directed that the respondents shall take a decision within three months from date in the light of the observations made herein above keeping in view the legal position discussed in this Judgment and comply with the direction contained in Order dated 12.01.2018 passed in O.A. No.1234 of 2016 by the learned Odisha Administrative Tribunal.

12. In the result, this writ appeal is allowed; so also the writ petition as a consequence thereof; and all pending interlocutory applications, if any, shall stand disposed of, but in the circumstances, there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 19th June, 2025//Aswini/MRS